discussed and we will be able to agree upon which will improve the bill. As a part of our understanding, there will be two letters from both advocates and opponents of this legislation to the White House on a couple matters that we believe are very important but that should first be addressed by the White House, such as the deemed export rule, which is a very complex matter that we believe should properly be handled by Executive order. So with those two amendments and those two letters, I think we are in a state of agreement with regard thereto.

The only other matter, as Senator SARBANES indicated, is the question of the commission. I anticipate that we will certainly know by 12 o'clock what the situation on that will be. We will either have a vote on that or not. But if we do, I would anticipate that would be the only rollcall vote that we would have, and we would be able to proceed forthwith to final passage.

Mr. ENZI. Will the Senator yield.

Mr. SARBANES. Certainly.

Mr. ENZI. I would add my thanks and appreciation for all the hard work, particularly of Senator THOMPSON and Senator KYL and their staffs and Senator GRAMM and his staff. The meetings and the work on this did go late into the evening last night and began this morning so we could have as little interruption and expedition of the business that needs to be done by the Senate. Their cooperation, their attention to detail, and their willingness to discuss throughout the whole process the last 3 years we have been working on it is very much appreciated, particularly the hours they and their staff put in last evening and early this morning.

Mr. SARBANES. Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF MEXICO

RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 10:40 a.m. having arrived, the Senate will now stand in recess until the hour of 12 noon.

Thereupon, the Senate at 10:40 a.m., preceded by the Secretary of the Senate, Jeri Thomson, and the Vice President, RICHARD B. CHENEY, proceeded to the Hall of the House of Representatives to hear the address by the President of Mexico, Vincente Fox.

(The address is printed in the Proceedings of the House of Representatives in today's RECORD.)

At 12 noon, the Senate, having returned to its Chamber, reassembled when called to order by the Presiding Officer (Mr. REID).

The PRESIDING OFFICER. In my capacity as a Senator from the State of Nevada, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

EXPORT ADMINISTRATION ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 149, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 149) to provide authority to control exports, and for other purposes.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, as we debate our system of export controls in this new era, we hear an array of arguments that reflect America's preeminent role in the world, our military and economic power, and the absence of the threat of major war that has prevailed since the demise of the Soviet Union a decade ago. We hear proud claims that trade is the new currency of international politics; that the strength of our economy, now more than ever, underpins our national power and global influence; and that in the brave new world of the Information Age, most technological flows are uncontrollable, or controls are meaningless due to the availability of the same technology from foreign competitors.

The business of America is business, we are told, and those of us who believe national security controls exist to protect national security, rather than simply expedite American exports, are accused of old thinking, of living in a dangerous past rather than a prosperous and peaceful present. For many, the new definition of national security—in a haunting echo of the thinking that inaugurated the last century—predicates the safety and well-being of the American people upon the free flows of trade and finance that make our economy the envy of the world, and our business leaders a dominant force in our time.

I am an ardent free trader, and I believe economic dynamism is indeed a central pillar of national strength. But I do not believe our prosperity requires us to forego very limited and appropriate controls on goods and technologies that, in the wrong hands, could be used to attack our civilian population here at home, or against American troops serving overseas. Experts agree that both rogue regimes and hostile terrorist organizations are actively seeking components for weapons of mass destruction, many of which are included in the list of goods we control under our current export licensing system.

Unlike in the Cold War era, when we created our export control regime to keep sensitive technologies out of the hands of the Soviet Union, this era is characterized by an array of diverse threats emanating from both hostile nations and non-state actors. Hostile nations like Iran and North Korea are disturbingly close to developing multiple-stage ballistic missiles with the capability to target the United States. These and other nations, including Syria and Iraq, receive significant and continuing technical assistance and material support for their weapons development efforts from China and Russia, with whom much of our trade in dual-use items is conducted. The intelligence community has made startlingly clear the proliferation record of China and Russia, as well as North Korea, and the adverse consequences of their weapons development and technology transfers to American security interests.

I do not believe that S. 149 adequately addresses these threats. Unfortunately, the Senate yesterday rejected a reasonable amendment offered by Senator THOMPSON allowing the relevant national security agencies to receive a 60-day time extension to review particularly complex license applications. This reform, proposed by the Cox Commission, and a number of amendments adopted by the House International Relations Committee in its markup of the Export Administration Act, properly addressed some of the deficiencies in the current version of S. 149.

S. 149 has the strong support of the business community and the Bush Administration. In the short term, proponents of this legislation are correct: loosening our export controls will assist American businesses in selling advanced products overseas. In another age, proponents of free trade in sensitive goods with potentially hostile nations were also correct in asserting the commercial value of such enterprise: Britain's pre-World War I steel trade with Germany earned British plants substantial profits even as it allowed Germany to construct a world-class navy. Western sales of oil to Imperial Japan in the years preceding World War II similarly earned peaceful nations commercial revenues. In both cases, friendly powers caught on to the destructive potential of such sales and embargoed them, but it was too late. Such trade inflicted an immeasurable cost on friendly nations blinded by pure faith in the market, and in the power of commerce to overcome the ambitions of hostile powers that did not share their values.

I resolutely support free trade. But I cannot with a clear conscience support passage of legislation that weakens our national security controls on sensitive exports to a point that we may one day be challenged, or face attack, from weapons derived from the very technologies we have willingly contributed to the world. Our peaceable intentions, our love of prosperity and stability, are not shared by those who would do America harm, and whose hostile ambitions today may well be matched tomorrow by the ability to deliver on that threat. We should make it harder, not easier, for them to do so.

Our export control regime should undergo significant reform to address the challenges and opportunities of our time. Proponents of S. 149 focus on the opportunities this legislation affords American business. I have worked with Senators THOMPSON, KYL, SHELBY, HELMS, and WARNER to highlight the reality that this bill does not adequately address the national security challenges we face today. National security controls cover only a tiny fraction of total American exports; the overwhelming majority of export applications for dual-use items are approved by our government; limited controls properly exist to help prevent highly sensitive technologies from falling into the wrong hands; and such safeguards are more relevant than ever in the face of the multifaceted and unconventional threats to our country unleashed by the information revolution.

A number of proponents of S. 149 argue that American companies should not be straitjacketed by U.S. national security controls even as their foreign competitors remain free to peddle similar technologies to proliferators and rogue regimes. This argument overlooks the fact that America continues to lead the world in technological innovation; our products are often unique when compared with those produced by businesses in France, Germany, or Japan. More fundamentally, such an approach only emboldens potential enemies who seek access to our markets in sensitive goods. In concert with friends and allies, we should endeavor to shame foreign companies who sell dangerous items to rogue buyers by making their identities public—not scramble for market access in dangerous technologies at their expense, as if nothing more than corporate profits were at stake. We should also make it a diplomatic priority to construct a new multilateral export control regime, in concert with like-minded nations, to fill the vacuum created by the collapse of COCOM, which regulated Allied exports during the Cold War to keep critical technologies out of Soviet hands.

As a proud free-trader, I maintain that we should continue to carefully review our most sensitive exports; we can, in fact, exercise some control over their end use. I fear we shall one day reap the bitter harvest we sow in our neglect of the consequences to America's security of an overly complacent export licensing regime. As a nation, we may have to learn the hard way that winking at the proliferation threats we face today, in light of clear evidence that nations to which we export sensitive technologies continue to apply and share them with our enemies, diminishes our national security to a point for which no amount of corporate profits will compensate.

I thank Senator THOMPSON for his efforts on this legislation. I do not believe that his amendment yesterday should have been defeated. I thought it was a reasonable amendment. I think it is also another example of a compelling requirement for campaign finance reform.

I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from South Dakota.

Mr. JOHNSON. Madam President, S. 149 is, in fact, a balance that modernizes our export control laws to account for the geopolitical, commercial, and technological changes of this past decade.

This bill recognizes that on occasion exports must be controlled for national security and for foreign policy reasons. S. 149 substantially increases the President's authority to impose controls when in fact they are necessary.

I have great respect for the few opponents of this legislation. However, I believe it is a misstatement to suggest that this bill somehow diminishes our Nation's ability to control technology which needs to be controlled when in fact this legislation imposes greater controls where necessary and significantly increases penalties and decreases the likelihood of sales that are inappropriate.

At the same time this legislation acknowledges that a vibrant American economy is a critical component of our national security. Senator BENNETT, our friend from Utah, spoke eloquently to this point yesterday.

Advancements in high technology allow us to ''run faster'' than our enemies. To foster continued advancements, we must take great care not to punish American businesses by limiting unnecessarily their marketplace, if those same products will simply be provided by our foreign competitors.

The observation is made, well, what about unique American technology? This legislation takes that into account. It allows for strong limitations where it is truly unique and where those sales would, in fact, pose some jeopardy to our Nation's security.

S. 149 balances our national security interests and our commercial interests with a first and foremost concern for national security—appropriately so. But it does recognize that our prosperity and our security are, in fact, interrelated.

This has been a thoroughly bipartisan process—a process, frankly, that I would like to see more often the case on the floor of this body.

I have great gratitude for the work of Chairman SARBANES, ranking member GRAMM, Senator ENZI, and some others who have contributed in a constructive way to this legislation. And Senators THOMPSON and KYL have made valuable suggestions to enhance the bill. I thank them for their role and their sincere concern for our Nation's security. I thank Senators DAYTON and ROBERTS for their constructive input on this legislation as well.

I urge the House to move expeditiously to pass the EAA so the White House can sign this bill into law. This is a high priority for the White House.

For those who may have some concern about the expertise of the vast bipartisan majority of this Senate in support of this legislation out of national security concerns, I again remind the body that this legislation not only had the overwhelming bipartisan support of thoughtful Senators on both sides of the aisle but is urgently supported by President Bush, by Secretary of Defense Rumsfeld, Secretary of State Powell, Commerce Secretary Evans, and National Security Adviser Condoleezza Rice. Certainly those in the White House have taken national security as a first and foremost concern. Any suggestion that somehow that issue has been taken lightly by the advocates of this bill is simply incorrect.

This has been, frankly, a model for how the Senate can work together for the good of our Nation. It is not a Republican bill. It is not a Democrat bill. But it is a bill put together across the aisle with the cooperation of the White House. It has been extremely gratifying, frankly, to have been so closely involved in the creation of this reauthorization.

To reject this legislation, to fall back on the Executive order, which is under legal challenge, and which extends far less authority to the White House to control the sales of high-tech items around the world, would be a tragic mistake. This Nation needs a modern dual-use technology trade regime. This legislation provides that.

Those in our Government who are given the great responsibility of national security have applauded this bill. It is the kind of balance our country needs. I believe the Senate has performed its work very ably to bring this bill to this point.

It is my hope we can conclude this debate very soon, work with our colleagues in the other body, and deliver this bill onto the desk of the President, who has urged us over and over again to pass this bill and to again have in place a strong, powerful, dual-use technology trade regime for our Nation.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMPSON. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1527

Mr. THOMPSON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. THOMPSON] proposes an amendment numbered 1527:

On page 197, line 15, strike ''substantially inferior'' and insert ''not of comparable quality''.

Mr. THOMPSON. Madam President, this amendment addresses the issue of foreign availability. As all who have listened to our discussion up until now realize, one of the more important pieces of S. 149 has to do with foreign availability. Essentially, what this bill does is say if the Department of Commerce makes a determination that some item has foreign availability status, then that item is essentially decontrolled. It does not go through the licensing process anymore, the idea being that it is out there and anybody can get it, and why control it.

Frankly, I think it is not a good idea. I think that foreign availability should be taken into consideration, as we always have in our export policy taken foreign availability into consideration. We do not want to try to stop the export of items that are clearly out there in the domain, but it should not be an overriding consideration. We should not be deregulating whole categories of items, and not even being able to keep up with how much we are shipping to some country, and what kind of item we are sending to some country.

This foreign availability concept takes these large categories totally outside the regulatory process that we are fearful might contain something that might turn out to be harmful to our national security. We ought to have a way for the appropriate representatives in our Government to judge these matters, item by item, and case by case, to make a determination. It may take a few days, a few weeks in some cases perhaps, to make this determination, but it is well worth it because the reason for export control laws is not primarily commerce; it is primarily national security.

If you look at this bill, you will see that the purpose of the export control law is to prevent the proliferation of weapons of mass destruction and things that are detrimental to our national security or things that potentially are. But, anyway, I am in the minority on that.

The administration supports this concept of foreign availability. The majority leadership supports this concept. So that being the case, we have attempted to enter into discussions whereby, hopefully, we could convince our colleagues on the other side of this issue that there is some validity to our concern and, hopefully, the idea being that they would make some accommodation to us on this concept.

I am happy to say that we have been able to reach some accommodation on this issue that addresses some of our concerns.

This amendment that I have just offered makes an important change to the definition of ''foreign availability.'' Under S. 149, items could be decontrolled and bypass any kind of review so long as similar items that were available from foreign countries were not substantially inferior to U.S. items. In other words, foreign availability would kick in and the decontrol would kick in under the bill as long as countries could get things that were not substantially inferior.

Our belief is that we ought to make sure, before we decontrol our items, they can really get items that are comparable to what we have. If they can get items that are inferior to what we have, then we should still maintain controls because we have something they cannot otherwise get. And they are sensitive matters or they would not have been on the control list. So we ought to be careful about that.

So this amendment changes that standard of ''not substantially inferior'' to ensure that the items are of ''comparable quality'' to U.S. items. It is a small but significant change that ensures that we will not decontrol superior American technology just because inferior items are available overseas.

So I think this strengthens this provision in an important way. It certainly does not address all of our concerns, but it does strengthen this provision in an important way to make sure if we are going to enter into this, what I consider to be a very large decontrol process, in a very dangerous time, to very dangerous countries, that we ought to at least make sure that if we are claiming they can get these items anyway, it is really the same kind of items we have, the same quality we have. I think this amendment would go a long way toward ensuring that.

I thank my colleagues on the other side of this issue for entering into real discussions with us on it. Hopefully, we have come to an agreement on this issue.

I yield the floor.

Mr. SARBANES. Madam President, I thank the Senator from Tennessee for his contribution throughout this debate. As he said, we have listened and considered carefully. I am perfectly prepared to accept this amendment. And I think introducing this quality concept about which he spoke yesterday is an important improvement and addition to this bill. I am happy to be supportive of it.

Mr. ENZI. I, too, thank the Senator from Tennessee for his cooperation and diligence in the months of working on this bill with us, and with the 59 other changes in the bill as well, and for his willingness to work with us on this change. We are happy to accept it.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. SARBANES. I urge adoption of the amendment.

The PRESIDING OFFICER. If not the question is on agreeing to amendment No. 1527.

The amendment (No. 1527) was agreed to.

Mr. SARBANES. I move to reconsider the vote.

Mr. ENZI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Madam President, I suggest the absence of a quorum.

Mr. THOMPSON addressed the Chair.

Mr. SARBANES. I withhold the request.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Madam President, I suggest that while we are waiting on another Senator, who I believe has one more amendment to consider, we discuss the matters of deemed exports and commodity classification. We have had some discussions about those subjects also. If I may, I will simply relate what my understanding is with regard to those issues.

First of all, on the deemed export issue, we have had concerns on this side that the legislation did not adequately address the problem of deemed exports. As most who follow this issue know, a deemed export comes about when, in a typical situation, sensitive information is passed to a foreign national who perhaps is working at one of our National Laboratories or working in one of our businesses on sensitive information, who may or may not have a government contract, the idea being that with regard to the physical exporting of an item, that information should then be controlled when giving it to a foreign national. That should be reported. We should go through a reasonable process to make sure no damage is being done.

We learned from hearings with regard to our National Laboratories, for example, that we were woefully behind as a government from even private industry; that we were not paying attention in our National Laboratories to the deemed export requirements. There were hardly any deemed export notifications or licenses issued by our laboratories. Our laboratories contain

probably the most sensitive matters that we have in this Nation, including the maintenance of our nuclear stockpile, our Stockpile Stewardship Program, including information concerning our most sensitive weapons.

We believed we should deal with the deemed export issue. The administration has said it would like to address this complex issue—and it is complex—through regulation rather than include it in the legislation. We have agreed that a letter will be sent to the administration from both supporters and opponents of this bill asking the administration to review existing regulations and address this issue.

Continued control of deemed exports is an essential component of our export control process. Right now there is substantial noncompliance, as I said. This letter is designed to urge the administration to develop new regulations that ensure understanding of and compliance with the responsibility to control deemed exports.

I understand there are some in the business community who do not like the concept of deemed exports at all. My understanding and intention, as far as this letter is concerned, is not to give the administration the option of continuing a deemed export policy or not; it is to tighten up the policy and make sure it is updated and clear in terms of what responsibilities are under that policy.

It is a reasonable request that they be given the opportunity to address it. It is a very complex issue. We don't want to create onerous requirements. These foreign students and scientists who come to America make valuable contributions in many different ways. But we simply have to exercise common sense and protect ourselves and go through an appropriate process when it comes to deemed exports.

I am happy. I believe we have reached some agreement that we write the administration and express generally those thoughts.

Could I get an amen on that?

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, again, I appreciate the care, concern, and detail in which the Senator from Tennessee and the Senator from Arizona, and others who have participated on this, have expressed their concerns about the deemed export controls. We do recognize that the problem is not primarily in the private sector; that it is primarily in the government and educational and health institutions. The private sector has some proprietary rights they try to preserve, but it would be a problem there, too, and we wanted it addressed in all those sectors.

Mr. THOMPSON. I thank the Senator.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 1529

Mr. KYL. Madam President, I have an amendment I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 1529.

Mr. KYL. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 296, strike line 1 through line 7 and insert the following:

''(3) REFUSAL BY COUNTRY.—If the country in which the end-user is located refuses to allow post-shipment verification of a controlled item, the Secretary may deny a license for the export of that item, any substantially identical or directly competitive item or class of items, any item that the Secretary determines to be of equal or greater sensitivity than the controlled item, or any controlled item for which a determination has not been made pursuant to section 211 to all end-users in that country until such post-shipment verification is allowed.''

Mr. KYL. Madam President, let me explain what this amendment does and indicate to my colleagues that I believe I have the concurrence of the chairman of the committee and the ranking member of the subcommittee and have met this morning with the ranking member of the Banking Committee who worked out the language with us. In fact, much of this is his language.

This is the amendment I spoke to yesterday regarding the post-shipment verification that sometimes has to occur when we say, in the granting of an export, we will grant the license to send the item overseas but for a peaceful purpose, for a commercial purpose, or research, or university, a business purpose; we don't want you to take this item and put it in your defense facility or a nuclear weapons facility, something of that kind. We are going to verify, after we ship it, that it went to the right place.

Remember these are dual-use items. They have two different uses. They may be very useful in a private way, business way. They may also be useful in a military way. Let me give an example.

Not too long ago, some folks in Germany developed a very important medical device called the lithotriptor which, with a high-energy beam, literally zaps kidney stones so they break up into a million little pieces and surgery is not necessary to remove them. It is a very important medical treatment now for people. It is nonintrusive, no surgery, and has a great success rate.

These are very sophisticated pieces of equipment. They have some special switching components in them. It turns out that Iraq has found that those switches are useful in their nuclear weapons program. This is a good example of a dual-use item. It was not invented for defense purposes. It has an item in it that can be used for weapons. We know that. We don't want that item to be used for that purpose.

Saddam Hussein has ordered 50 of these. I don't think there is a need for 50 lithotriptors in Iraq, frankly. We want to be careful about the export of items that are available on the market. Any hospital can buy a lithotriptor if they have enough money. They are available. By now I am sure there are more companies than just the one German company that make them. These are items that can be acquired. They have dual-use capabilities.

In the granting of an export license on this kind of product, you have to be careful that it is not used for military purposes.

It may be that the example I used isn't technically correct in the way the bill would work, but I think I make my point.

The bill has a provision in it which says that if a company to which you sell, let's say a company in China, uses this product improperly, or they don't let you inspect to see where they have used it to verify that the shipment went to where it was supposed to go, then the Secretary shall cut that company off from further exports; they can't buy anything else from the United States.

But since countries such as China have established a rather gray relationship between the Government and businesses, there also needs to be a way of making the same point with the Government of China or any other government.

I am not trying to pick on China. There happen to be some very egregious examples of the Government of China right now not living up to agreements or post-shipment verification. We need to have some kind of enforcement mechanism in a country such as China as well. I proposed that we have the same kind of provision and say if the Chinese Government won't permit a post-shipment verification, then the Secretary shall stop such exports until they begin to comply. Well, supporters of the bill said, ''That is too drastic; why don't you say 'may' so that the Secretary has total discretion?'' I was willing to do that. That would have been the simplest way to solve the problem.

That is something I would like to offer in the spirit of cooperation with my friend Phil Gramm, who said, ''Let's try to work a few of these things out; since we know the bill will pass, you can make it marginally better.'' So we sat down with him. Frankly, the language we are offering is not what I would have personally offered, but it is acceptable to him and it marginally

makes the bill better. I will read it and offer it. It is simple. It says: If the country in which the end user is located refuses to allow post-shipment verification of a controlled item, the Secretary may deny a license for the export of that item, any substantially identical or directly competitive item or class of items, any item that the Secretary determines to be of equal or greater sensitivity than the controlled item, or any controlled item for which a determination has not been made pursuant to section 211 to all end users in that country until such post-shipment verification is allowed.

That latter reference to section 211 has to do with the item subject to foreign availability. It would have been simpler to say the Secretary may deny a license for any item on the list until post-shipment verification is allowed by the country in question. Total discretion of the Secretary would have been easier. We have created jobs for lawyers now. I am not necessarily against that, but when we have terms such as this in the statute, we are going to have litigation on what it means. It would have been easier to do it the other way. But this is the language I will offer. The Secretary, at least with respect to some items on the control list, can say to a country such as China, for example: Until you are willing to allow post-shipment verification of items A and B, which you already have, then we are not going to grant a license on items X, Y, and Z. They can pick what those items are if they so choose.

In closing, I will give examples of what would happen to illustrate the need for this particular provision. In 1998, very recently, China agreed to allow post-shipment verification for all exports. They signed an agreement. But the Cox Commission issued its report and deemed the terms of the agreement wholly inadequate, from the U.S. point of view, to ensure that these verifications really occur.

The amendment I proposed is designed to try to fill a void the Cox Commission identified in the U.S.-China agreement. For example, the Commission's report discusses a number of weaknesses in the agreement as it relates to the export of high-performance computers. According to the Bureau of Export Administration, out of 857 high performance computers that have been shipped to China, only 132 post-shipment verifications have been performed. Some of these have been outstanding for a long time. First you get foot-dragging, and then you get a ''no.'' On other occasions they say: If you allow us to do the post-shipment verification, that ought to suffice. But, of course, it does not. These items would not necessarily be subject to the terms of this section, although they might. I think it illustrates the nature of the problem that exists if you don't have an enforcement mechanism. You have to have the will to enforce.

I think there will be great questions as to whether or not the Secretary, in the exercise of his discretion, is going to be willing to deny a license to an American company which, after all, hasn't done anything wrong and is simply trying to make a buck, in order to get China to enforce the limitation. Let me respond to that point.

Any American company which understands that the item it is wanting to export to a third-tier country, countries of concern here, has dual-use capability has to exercise some responsibility. I think it has to take some of the consequences of the person to whom it is exporting not being willing to guarantee that the item is going to be used for appropriate purposes.

So I don't think you can make the case that all we are doing here is potentially punishing American businesses that are totally innocent and therefore we should not really be very forward-leaning in the enforcement of this section.

The fact is that any American business worth its salt should want to ensure that the terms of the export license are being complied with. It doesn't want to sell dual-use technology to a country that could use it against us militarily. It ought to be willing to ensure that the verification of the end user has in fact been established and enforced.

So it seems to me there is no argument that all we are doing here is hurting American businesses. Any American business would have the same interest as the U.S. Government in ensuring that the end user is in fact who it is supposed to be, both from a national security standpoint and being able to make future exports.

There has even been an idea advanced, that I think has some merit, which would put all of the burden on American business. It would basically privatize this enforcement and say the Government is going to get out of this business; it cost a lot of money, and we have trouble getting in the door to verify these things. Private industry, in effect, has to certify that the item it sold abroad went to the user that filled out on the form the certificate. And if the company isn't willing to verify that, or isn't able to certify it under penalty of some financial detriment here in the United States, then it is going to become much more careful about to whom those items are sold and how the post-shipment verification is actually implemented.

So my suggestion to American businesses is, if you really want to continue to be able to export, then help us work out a system that ensures that these items you are exporting, which have a dangerous potential use, get to the proper people and are not misused. If you are not willing to help us do this and if you are going to argue against enforcement of a section such as this, then something worse could happen. You could have the enforcement responsibility put on your shoulders. And if you are not able to certify that it went to the right place, you are not going to be able to make exports in the future. Everybody should have an interest in making this work.

Let me close with a note about some testimony that verified the need for this. David Tarbell, Deputy Under Secretary of Defense for Technology Security Policy, testified in July at a hearing before the House International Relations Committee regarding the right to perform post-shipment verifications. He very diplomatically said:

> The Chinese government has been unwilling to establish a verification regime and end-use monitoring regime that would get all of the security interests that we are interested in to ensure that items that are shipped are not diverted.

Impressed further by Chairman HYDE about whether the post-shipment verification regime is a failure, Secretary Tarbell delicately said:

> I am not sure I would characterize it as a complete failure, but it is close to it. It is not something I have a great deal of confidence in.

The point here is to create something that we do have confidence in, that we know would work, that we can enforce and ensure the safety and security of the United States in the future, knowing we have not allowed the wrong people to get the wrong things into their hands in a way that comes back against the United States in a military way.

Therefore, I urge my colleagues to support the amendment I have offered and which has the concurrence of Senators GRAMM and ENZI and, I believe, the Senator from Maryland, Mr. SARBANES.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Again, we appreciate the participation in the 59 changes before and now this change. It shows the level of detail in which Senator THOMPSON and Senator KYL have approached this bill. We appreciate this change. We are willing to accept it.

The PRESIDING OFFICER. Is there further debate on the amendment?

The question is on agreeing to the amendment.

The amendment (No. 1529) was agreed to.

Mr. SARBANES. Madam President, I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THOMPSON. Madam President, I ask the Senator from Maryland if we may make a brief statement as to our understanding on the second letter we have discussed. That will complete our business, I believe.

Mr. SARBANES. Certainly.

Mr. THOMPSON. Madam President, this has to do with commodity classification. We have had some concern that when people in the business of exporting items come into the Department of Commerce and they get a different classification for a commodity—in other words, something might be subject to license and they believe it should not be subject to license anymore—they can come in and get that consideration. That is appropriate. That needs to be done, but it needs to be done in a manner which protects the Government and the country's interest from a national security standpoint.

The executive branch has traditionally dealt with this issue through interagency agreements. We think they need to be updated. The existing agreement is 5 years old and needs to be updated to create an increased role for the Departments of Defense and State.

Both the opponents and supporters of this legislation will send a letter to the administration requesting the issuance of a new Executive order on commodity classification to ensure the participation of the National Security Agency. We believe that with regard to many of these issues, as the administration is trying to staff up and with our discussions with them and among each other, we have realized just how outdated the existing agreement is. We are going to send a letter to them to bring this to their attention further, and suggest they issue an Executive order.

We assume this will be done in an appropriate manner, and we will not have to take additional action. That option, of course, is always there. Pending that, we think this is an appropriate way to proceed.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I thank the Senator from Tennessee again for his emphasis. It is important that there be updates on the different procedures, particularly the ones that are done through memos of understanding between the agencies.

We appreciate the willingness of the Senator from Tennessee to allow that to continue to be done that way so there is more flexibility to react to current crises under that kind of ability. We have prepared a letter to that effect, and we will be sending it.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Madam President, one final note. We have had some discussion in this Chamber concerning the possibility of an amendment that would create a so-called blue ribbon commission to address additional concerns as to how our export policies might be affecting national security. I believe it is fair to say, not having heard from my other colleagues on this issue, that we have not been able to reach agreement with regard to that.

Without a doubt, we will continue to work together among ourselves to try to agree on the composition of such a commission. I think we all agree the concept is a good idea, and that we ought to take a long impassioned look at what we are doing. We will continue to work on that, but for right now I believe we can take that off the table.

That concludes our comments on the bill in terms of these amendments.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I thank the distinguished Senator from Tennessee for his very positive and constructive contributions throughout.

AMENDMENT NO. 1530

Mr. SARBANES. Madam President, I send a managers' amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Maryland [Mr. SARBANES], for himself, Mr. GRAMM, Mr. ENZI, and Mr. JOHNSON, proposes an amendment numbered 1530.

Mr. SARBANES. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 193, line 10, strike ''party'' and insert ''person''.

On page 193, line 16, strike ''party'' and insert ''person''.

On page 205, line 7, after ''competition'' insert '', including imports of manufactured goods''.

On page 222, line 6, strike ''Crime'' and insert ''In order to promote respect for fundamental human rights, crime''.

On page 223, line 3, strike ''The'' and insert ''Except as herein provided, the''.

On page 223, line 9, after the period, insert the following: ''The provisions of subsection (a) shall apply with respect to exports of any of the items identified in subsection (c).''.

On page 223, between lines 9 and 10, insert the following:

(c) REPORT.—Notwithstanding the provisions of section 602 or any other confidentiality requirements, the Secretary shall include in the annual report submitted to Congress pursuant to section 701 a report describing the aggregate number of licenses approved during the preceding calendar year for the export of any items listed in the following paragraphs identified by country and control list number:

(1) Serrated thumbcuffs, leg irons, thumbscrews, and electro-shock stun belts.

(2) Leg cuffs, thumbcuffs, shackle boards, restraint chairs, straitjackets, and plastic handcuffs.

(3) Stun guns, shock batons, electric cattle prods, immobilization guns and projectiles, other than equipment used exclusively to treat or tranquilize animals and arms designed solely for signal, flare, or saluting use.

(4) Technology exclusively for the development or production of electro-shock devices.

(5) Pepper gas weapons and saps.

(6) Any other item or technology the Secretary determines is a specially designed instrument of torture or is especially susceptible to abuse as an instrument of torture.

On page 226, line 8, insert ''and'' after ''title;''.

On page 226, strike lines 9 through 22 and insert the following:

(ii) upon receipt of completed application—

(I) ensure that the classification stated on the application for the export items is correct;

(II) refer the application, through the use of a common data-base or other means, and all information submitted by the applicant, and all necessary recommendations and analyses by the Secretary to the Secretary of Defense, the Secretary of State, and the heads of any other departments and agencies the Secretary considers appropriate; or

(III) return the application if a license is not required.

On page 296, line 13, strike ''parties'' and insert ''persons.''

On page 296, line 11, after ''necessary'' insert '', to be available until expended,''.

On page 296, line 20, after ''necessary'' insert '', to be available until expended,''.

On page 297, line 20, after ''$5,000,000'' insert '', to be available until expended,''.

On page 298, line 12, after ''necessary'' insert '', to be available until expended,''.

On page 300, line 12, after ''$2,000,000'' insert '', to be available until expended,''.

On page 300, line 14, after ''$2,000,000'' insert '', to be available until expended,''.

On page 311, strike lines 2 through 4 and insert the following:

''other export authorization (or record-keeping or reporting requirement), enforcement activity, or other operations under the Export Administration Act of 1979, under this Act, or under the Export''

On page 311, line 14, insert ''by an employee or officer of the Department of Commerce'' after ''investigation''.

On page 315, strike lines 6 through 10 and insert the following: (1), except that no civil penalty may be imposed on an officer or employee of the United States, or any department or agency thereof, without the concurrence of the department or agency employing such officer or employee. Sections 503 (e), (g), (h), and (i) and 507 (a), (b), and (c) shall apply to actions to impose civil penalties under this paragraph. At the request of the Secretary, a department or agency employing an officer or employee found to have violated paragraph (1) shall deny that officer or employee access to information exempt from disclosure under this section. Any officer or employee who commits a violation of paragraph (1) may also be removed from office or employment by the employing agency.

On page 315, line 11, insert the following:

SEC. 603. AGRICULTURAL COMMODITIES, MEDICINE, MEDICAL DEVICES.

(a) APPLICABILITY OF TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000.—Nothing in this Act authorizes the exercise of authority contrary to the provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000 (Public Law 106–387; 114 Stat. 1549, 549A–45) applicable to exports of agricultural commodities, medicine, or medical devices.

(b) TITLE II LIMITATION.—Title II does not authorize export controls on food.

(c) TITLE III LIMITATION.—Except as set forth in section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000, title III does not authorize export controls on agricultural commodities, medicine, or medical devices unless the procedures set forth in section 903 of such Act are complied with.

(d) DEFINITION.—In this section, the term ''food'' has the same meaning as that term has under section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)).

On page 318, on line 2, strike ''and''.

On page 318, on line 3, insert after ''(15)'' the following: ''a description of the assessment made pursuant to section 214, including any recommendations to ensure that the defense industrial base (including manufacturing) is sufficient to protect national security; and'' and redesignate paragraph 15 accordingly.

On page 324, strike lines 1 through 4 and redesignate paragraphs (14) and (15) accordingly.

Beginning on page 324, line 21, strike all through page 325, line 5, and insert the following:

(j) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product that is standard equipment, certified by the Federal Aviation Administration, in civil aircraft, and is an integral part of such aircraft, shall be subject to export control only under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act (22 U.S.C. 2778(b)).

On page 325, between lines 5 and 6, insert the following:

(k) CIVIL AIRCRAFT SAFETY.—Notwithstanding any other provision of law, the Secretary may authorize, on a case-by-case basis, exports and reexports of civil aircraft equipment and technology that are necessary for compliance with flight safety requirements for commercial passenger aircraft. Flight safety requirements are defined as airworthiness directives issued by the Federal Aviation Administration (FAA) or equipment manufacturers' maintenance instructions or bulletins approved or accepted by the FAA for the continued airworthiness of the manufacturers' products.

On page 325, line 6, strike ''(k)'' and insert ''(l)''.

Mr. SARBANES. Madam President, the managers' amendment consists of provisions intended to clarify, correct, and improve the bill.

Section 211: This provision amends the term ''interested party'' in Section 211 (foreign availability and mass market status) to ensure its consistency with terms used in the rest of the bill. Sections 205, 302, and 307 all refer to ''interested person(s)''. The managers' amendment corrects the references in Section 211 by replacing ''interested party'' with ''interested person''.

Sections 214 and 701: This provision clarifies the duties of the Office of Technology Evaluation. Section 214 of the bill establishes an Office of Technology Evaluation to analyze information and provide assessments for use in export control policy. The managers' amendment clarifies that when assessing the effect of foreign competition on critical US industrial sectors, the Office is to consider imports of manufactured goods. It also modifies Section 701 (annual report) to ensure that the Commerce Department's annual report to Congress includes a description of such assessments. The managers worked closely with Senator HOLLINGS to include this provision.

Section 311: The next provision modifies Section 311 (crime control instruments). Section 311 preserves authority contained in existing law (Section 6(n) of the Export Administration Act of 1979) to ensure that crime control and detection instruments and equipment may be exported only subject to an export license. The managers' amendment further provides that any item or technology that the Secretary of Commerce determines is a specially designed instrument of torture or is especially susceptible to abuse as an instrument of torture can be exported only pursuant to an individual export license. In addition, the Annual Report of the Bureau of Export Administration must describe the aggregate number of licenses approved during the preceding calendar year for the export of any such items by country and control list number. This provision was included in the Managers Amendment at the request of Senators LEAHY and BIDEN.

Section 401: The next provision makes a technical correction to Section 401 (export license procedures). Section 401 requires Commerce to take four actions—hold incomplete applications, refer applications to other agencies, confirm commodity classification, and return application—at the beginning of the license review process. As drafted, however, some of these actions are mutually incompatible (for example, Commerce cannot hold an incomplete application while simultaneously referring the application to another agency). The managers' amendment revises the language to correct this inadvertent incompatibility.

Section 506: This provision amends the term ''interested parties'' in Section 506 (enforcement) to ensure its consistency with terms used in the rest of the bill. Sections 205, 302, and 307 all refer to ''interested person(s)''. The managers' amendment corrects the references in Section 506 by replacing ''interested parties'' with ''interested person''.

Section 506: The next provision makes technical amendments to Section 506. Sections 506(h), (i), (l), and (o) all contain funding authorizations for personnel or activities of the Bureau of Export Administration. The managers' amendment clarifies that the funding is to remain available until expended.

Section 602: This provision clarifies a provision in Section 602 (confidentiality of information). Section 602 outlines the treatment of confidential information obtained after 1980. The managers' amendment clarifies that the provision applies to not only to information obtained through license applications, but to information obtained through enforcement activity or other EAA operations.

Section 602: This provision further clarifies Section 602 (confidentiality of information). Section 602 provides that information obtained through licenses, classification requests, investigations, treaty, or the foreign availability/mass-market process shall be kept confidential unless its release is in the national interest. It goes on to provide penalties against those who violate this prohibition. The managers' amendment makes three changes: it (1) clarifies the investigations referred to are those carried out by Department of Commerce officials; (2) ensures that penalties on violators are imposed with the agreement of the violators' employing agency; and (3) allows violators to be denied further access to confidential information and to be removed from office.

Section 603: The next provision adds a technical provision relating to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). TSRA established restrictions on sanctions dealing with agricultural commodities, medicine, and medical devices. The managers' amendment adds a new Section 603 that is intended to hold TSRA harmless by (1) ensuring that no authority in this Act may be exercised contrary to TSRA; (2) clarifying the limitations on national security controls; and (3) clarifying the application of TSRA procedures to foreign policy controls. Senators ROBERTS and DAYTON were instrumental in crafting this language, and worked with bill managers to perfect the text.

Section 702: This provision corrects a technical reference in Section 702 (technical and conforming amendments). As drafted, the reference would have affected the Forest Resources Conservation and Shortage Relief Act of 1990. The managers' amendment removes the reference and thus any inadvertent impact on the Forest Resources Act.

Section 702: The next provision corrects a drafting error in Section 702 (technical and conforming amendments). Section 702(j) preserves authority contained in existing law (Section 17(c) of the Export Administration Act of 1979) to ensure that standard civil aircraft products remain subject to the EAA. As drafted, Section 702(j) inadvertently departed from current law by breaking the original paragraph into subparagraphs. Because this structure could cause confusion in interpretation, the managers' amendment returns the text to its original structure.

Section 702: This provision addresses a humanitarian issue. U.S. aircraft manufacturers cannot export critical aircraft safety parts to countries subject to U.S. embargo. Without those parts, the planes may crash, with terrible humanitarian implications. A presidential waiver to export such parts is available, but is rarely invoked and takes years. The managers' amendment provides that exports of civil aircraft equipment to comply with flight safety requirements for commercial passenger aircraft may be authorized on a case-by-case basis. Senators DODD,

BOND, MURRAY, and ROBERTS expressed particular interest in addressing this problem.

Mr. ENZI. Madam President, the managers' amendment to S. 149 adds a new provision to address a pressing humanitarian issue: flight safety.

U.S. aircraft manufacturers have sold commercial passenger aircraft internationally since the 1950s. Moreover, some European-made commercial aircraft are made with U.S. components. As a result, U.S. aircraft are used widely around the world.

The safe operation of these aircraft depends on the replacement of worn parts, repair of unsafe components, and receipt of technical bulletins and airworthiness directives. These parts, services, and information are highly specialized, and often are available only from the original manufacturer.

Over the years, several nations that operate U.S.-made aircraft, or European-made aircraft that incorporate U.S. parts, have become subject to U.S. embargo. As a result, U.S.-made aircraft items cannot be exported to those countries. This poses a significant threat to the safe operation of those airplanes. Without replacement parts, repair, and technical information, the planes literally may fall out of the sky, with terrible humanitarian implications for passengers and those on the ground. We all remember with horror the terrible 1992 crash, resulting from a failed part, of an El–Al plane into an Amsterdam apartment complex. All 4 crew and an estimated 70 Amsterdam residents were killed. The risks are real for U.S. citizens traveling to embargoed countries, or making up part of United Nations delegations. Citizens of U.S. allies are at risk. And not least of all, innocent citizens of embargoed countries are particularly vulnerable.

Under current law, the administration has some flexibility to allow flight safety exports to nations such as Sudan and Syria. However, exports to Iran or Iraq require a presidential waiver—a process that takes years and is rarely invoked. The difficulty of obtaining such a waiver has meant that U.S. manufacturers cannot provide critical flight safety parts or information to those nations.

The managers' amendment addresses this humanitarian issue while retaining the integrity of the embargo. It provides that aircraft equipment exports to comply with safety requirements for commercial passenger aircraft may be authorized on a case-by-case basis. It is tightly circumscribed: it applies only to parts for civil aircraft used for commercial passengers, and it requires a case-by-case analysis.

Senators DODD, BOND, MURRAY, and ROBERTS are keenly interested in this provision and should be commended for addressing this critical humanitarian problem.

Mr. SARBANES. Madam President, this managers' amendment has been carefully worked over. I do not think there is any matter of controversy in it. I am prepared to go to adoption of the managers' amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to amendment No. 1530.

The amendment (No. 1530) was agreed to.

Mr. SARBANES. I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Madam President, we are prepared to go to third reading of the bill, and then there are going to be some comments. If we can go to third reading of the bill.

Mr. THOMPSON. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMM. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Madam President, I simply want to make a closing statement on this important bill. I begin by thanking the chairman of the committee, Senator SARBANES, for his leadership, and Senator JOHNSON for the work, they have done on the bill. I especially want to thank Senator ENZI for his indispensable leadership on this bill; it is no understatement to say that we would not be here today were it not for Senator ENZI's leadership on this bill for the past two years.

I have had the privilege of serving in the Senate now going into my 18th year, and I have never seen a Senator do the things Senator ENZI has done on this bill—in terms of being willing to meet the various agencies involved in export administration, sitting for endless hours and watching how the process works, and doing something we seldom do in this line of work: learn how the process works practically. We are often not willing to spend the time or get our hands dirty. The quality of the bill before us is due in very large part to Senator ENZI, and I want to publicly and personally thank him for his leadership. It sets a new standard for what a Senator ought to be in terms of hard work behind the scenes, getting the facts, understanding the mechanism. We like to deal with theory and leave the practical matters up to somebody else. That is not the way Senator ENZI does business.

I thank our two colleagues, Senator THOMPSON and Senator KYL. Maybe people listening to this debate wonder why I would thank them, given that we have some fundamental disagreements, but good law is made by basically trying to accommodate people who do not agree with you while maintaining your principles. I think, quite frankly, they have improved the bill.

Counting the two changes that Senator SARBANES, Senator ENZI and I agreed to this morning, we have made 61 changes in this bill in trying to build a consensus. I believe the product we have produced is a quality product, it will stand the test of time, and it will work.

The points I want to make are: In listening to some of the critics, one may have gotten the idea that somehow this bill lessens our commitment to national security. We have an apparent conflict in America between our desire to produce and sell items that embody high technology, and we want to produce and sell them because the country that develops new technology creates new jobs and creates the best jobs.

So, while we want to be the world leader in that technology, we have a conflicting goal in wanting to prevent would-be adversaries and dangerous people from getting technology that can be used to harm us or to harm our interests. That is what this bill is about.

Today, 99.4 percent of the applications for a license are granted. When a process is saying ''yes'' 99.4 percent of the time, it is a nonsense process.

We have about 10 times as many items on this controlled list as we should have. We need to build a higher fence around a smaller number of items, and when people knowingly violate the law and transfer this technology we ought to come down on them like a ton of bricks.

Under this bill, the penalties can run into the tens of millions of dollars and people can end up going to prison for life. Those are pretty stiff sentences.

We have put together an excellent bill. It represents a compromise between two competing national goals. It is legislation at its best. Many times we claim bipartisanship on bills when they really are not totally bipartisan. This bill is about as bipartisan as anything we have ever done on the Banking Committee since I have been in the Senate, and I think it represents good law.

It is supported by the President. We have some 80 Members of the Senate who have voted basically to maintain the position. I am very proud of it, and I commend it to my colleagues. This is a good bill we can be proud of.

I am ready to vote, and I yield the floor.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Nevada.

Mr. REID. Mr. President, we are now in agreement on the unanimous consent request I will now propound.

I ask unanimous consent that a vote on final passage of S. 149 occur at 4:00 p.m. today, with rule 12, paragraph 4 being waived; that no substitute

amendments be in order; that the committee substitute amendment be agreed to; the motion to reconsider be laid upon the table, and that the time until 4:00 be divided between the majority and minority for morning business, with the exception of 8 minutes prior to the 4:00 p.m. vote, which would allow Senators ENZI, GRAMM, SARBANES, and THOMPSON each to have 2 minutes prior to the vote.

The PRESIDING OFFICER. Is there objection?

Mr. THOMPSON. Reserving the right to object.

Mr. REID. If the Senator would withhold, our able staff indicated I misread this. It is right before my eyes, so if I could just repeat this.

The vote will occur at 4:00 p.m. today, with rule 12, paragraph 4 being waived; that no other amendments be in order; that the committee substitute amendment be agreed to; the motion to reconsider be laid upon the table; the time until 4:00 p.m. be divided between the majority and minority for morning business, with the final 8 minutes prior to 4:00 p.m. being allotted to Senators ENZI, GRAMM, SARBANES, and THOMPSON each allowed to speak 2 minutes prior to the vote on the bill.

Mr. THOMPSON. Mr. President, reserving the right to object, I do believe it would be appropriate to divide the final few minutes equally between the proponents and the opponents.

Mr. REID. That would be very fine. So what we say is 4 minutes for the opposition and 4 minutes for those propounding passage of the legislation be divided equally.

Mr. THOMPSON. Further, I want to take a few minutes right now in morning business or as a part of this UC, either one.

Mr. REID. I say to my friend that will be certainly appropriate. We will get this unanimous consent request agreed to and the Senator can have lots of time. Senator TORRICELLI wants 15 minutes, but we will be glad to wait until the Senator from Tennessee has completed his statement.

Mr. THOMPSON. That is satisfactory to me.

The PRESIDING OFFICER. Is there objection to the request as modified? Without objection, it is so ordered.

The committee substitute, as amended, is agreed to and the motion to reconsider is laid upon the table.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mrs. FEINSTEIN. Mr. President, I rise today in support of the Export Administration Act of 2001 and urge its passage.

Congress has not reauthorized the Export Administration Act on a permanent basis since 1990, and for close to a decade the export of dual-use goods—items with both civilian and possible military applications—have been governed in an ad hoc way by the President using Executive orders under the International Emergency Economic Powers Act and without a comprehensive regime in place to monitor exports.

Such an approach creates obvious problems in trying to assure that the proper balance is struck between the need of U.S. businesses to be competitive in the international economy and the need to prevent sensitive technologies that have military applications from falling into the wrong hands.

The Export Administration Act will allow the U.S. government to effectively focus attention and exert control over sensitive technologies that have military implications, improve the export control process, and enhance national security.

The major provisions of the Export Administration Act of 2001 will:

Give the President the power to establish and conduct export control policy, and direct the Secretary of Commerce to establish and maintain the Commerce Control List of items that could jeopardize U.S. national security and to oversee the licensing process for items on the Control list.

Authorize the President to impose national security controls to restrict items that would contribute to the military potential of countries in a manner detrimental to U.S. national security, directing the Secretary of Commerce, with the concurrence of the national security agencies and departments, to identify items to be included on a National Security Control List. This strengthens the hand of the national security agencies in the export licensing process by giving them for the first time a formal procedure by which to be involved in this process.

Provide specific control authority based on the end-use or end-user for any item that could contribute to the proliferation of weapons of mass destruction.

Authorize the President to set aside ''foreign availability'' or ''mass-market'' determinations in the interests of national security, and establish an Office of Technology Evaluation to gather, coordinate and analyze information necessary to make to these determinations.

Establish procedures for the referral and processing of export license applications, and establish an interagency dispute resolution process to review all export license applications that are the subject of disagreement.

Declare it U.S. policy to seek and participate in existing multilateral export control regimes that support U.S. national security interests, and to seek to negotiate and enter into additional multilateral agreements. Given the wide availability of some of these dual-use items, multilateral agreements are critical to assure that they do not fall into the wrong hands.

Establish new criminal and civil penalties for knowing and willful violations of the export procedures.

By streamlining and bringing transparency to the licensing process this legislation, then, strikes a good balance between assuring that the export licensing process is good for trade, the U.S. economy, and jobs, and national security concerns.

This legislation is supported by the President and has been endorsed by the Secretary of Defense, by the Secretary of State, and by the President's National Security Adviser. It also has the support, I believe, of the majority of my colleagues.

Mr. President, I urge the Senate to move forward with passage of the Export Administration Act.

Mr. SPECTER. Mr. President, I think it is important to state my reasons for voting against S. 149, the Export Administration Act. I do so because I think there is too much deference to commercial interests at the expense of limiting exports which may threaten national security.

I cast my vote late in the rollcall when there were 77 votes in favor of the bill, which eventually turned out to be an 85 to 14 vote, so that I knew the bill was going to pass by overwhelming numbers.

Legislation on this subject is of great importance and is long overdue. I was tempted to vote in favor of the bill on the proposition that the best frequently is the enemy of the good. Had my vote been decisive so that it might have been a matter of having a bill which vastly improved the current situation, which is the absence of legislation, then I might have voted differently. I think the number of negative votes are important as a protest signal that this subject should be monitored closely and perhaps reviewed sooner rather than later.

For example, my concerns about the elevation of commercial interests over potential national security risks are illustrated by the foreign availability and mass market status this Act provides controlled items. The foreign availability component of the act would make the U.S. Government unable to control the sale of items that are also manufactured by other countries. Such lack of control would allow U.S. firms to sell anthrax to Saddam Hussein because of anthrax's dual-use in vaccine production. Additionally, the mass-market status in this bill would enable export of controlled items without a license if the item were mass produced for different industrial uses. An example of this mass-market status would be glass and carbon fibers that can be used in the manufacture of both golf clubs and also ballistic missiles.

These are only illustrations of problems which, I believe, should yet be corrected in conference or in later legislation.

Mr. JOHNSON. I am very pleased that S. 149, the Export Administration Act of 2001, passed the U.S. Senate by such an overwhelming bipartisan vote of 85–14. This important law reforms our export controls of dual-use items to reflect the vast geopolitical, technological and commercial changes that have occurred since the old law was enacted back in 1979. While we must remain ever-vigilant to protect our nation from security threats, we must at the same time recognize that our security depends in large measure on a vibrant economy, and in particular on our ability to continue innovating in the high technology sector. Ensuring that American producers have the ability to participate in the global marketplace is critical to this effort.

The hard work that contributed to the overwhelming support for S. 149 cannot be overstated, and I was especially gratified by the spirit of cooperation that dominated the discussion. This bill, and the quality of its provisions, owe a great deal to the thoughtful participation of a variety of players on both sides of the aisle. In some cases, too many cooks spoil the broth. In this case, however, a variety of players made very thoughtful improvements to the bill. I extend my thanks and gratitude to the core group of sponsors, which included Senator MIKE ENZI, Republican of Wyoming, Chairman PAUL SARBANES from Maryland, Senator PHIL GRAMM from Texas, and also to so many others contributed to an improved final product.

In particular, I would be remiss in not mentioning the important and dedicated efforts of Senator MARK DAYTON, my Democratic colleague from Minnesota. Senator DAYTON and his staff worked tirelessly to ensure that S. 149 protects the interests of the agricultural community relative to export controls. While there are many legitimate reasons to restrict the export of certain items abroad, especially where the export of such items could pose a threat to America's national security, there is to my mind absolutely no acceptable logic for imposing restrictions on the export of food.

The export of food can never pose a national security threat to this Nation, and Senator DAYTON, along with his Republican colleague from Kansas Senator PAT ROBERTS, put together an amendment that eliminated the possibility that this government ever restrict the export of food for a purported national security threat. I look forward to continuing to work with Senator DAYTON on agricultural issues, and I know that the farm community is grateful to the Senator for his work in this area. I also wish to commend Senator DAYTON's staff, in particular Jack Danielson, Sarah Dahlin and Lani Kawamura.

Mr. KYL. Mr. President, a consensus emerged during the 1990s with regard to the national security of the United States. That consensus was and remains that the proliferation of weapons of mass destruction—nuclear, chemical and biological—and their means of delivery constitute the most important threat to our national security. There is also widespread acknowledgment that a number of rogue nations, and particularly China, represent the new national security challenge for the United States.

Yet, this body, the U.S. Senate, is about to pass with overwhelming support a major piece of legislation that stands in direct contradiction to the objectives of U.S. national security policy—to limit the spread of weapons of mass destruction and their means of delivery.

This is not hyperbole; it is a simple statement of fact. I acknowledge that the administration has endorsed S. 149. A campaign pledge has been kept. But the long-term ramifications of the vote we are about to take should not be underestimated. S. 149 received the strong opposition of the former chairmen, now ranking members, of each committee and subcommittee with responsibility for national security. It can in no way be considered to represent a prudent balance between commerce and national security. It is, in fact, heavily weighted in favor of the former, with scant regard for the latter.

The list of exports with which we have traditionally been concerned, the Commerce Control List, has 2,400 items on it. It is important to note that exports of these items are licensed, not prohibited. Contrary to the rhetoric of some, it also is not the shopping list of someone making a Sunday trip to Radio Shack. It is, rather, a compilation of esoteric items that have military applications, including for the construction of nuclear weapons and ballistic and cruise missiles. The amount of commerce at issue is minuscule relative both to the amount of U.S. exports and to the size of the gross domestic product. Restrictions or limitations on the export of items on the Commerce Control List do not now, nor have they ever had a deleterious effect on the U.S. economy, or on U.S. competitiveness. They do, however, represent the regulatory manifestation of our national security requirements and the role our moral values should play in the conduct of foreign and trade policies.

Some of us who oppose this bill support permanent normal trade relations with China. And, yet, we oppose this bill. We oppose it because it will, by design, open the door to the export without government oversight of the very items and technologies that contribute to the threats to our security that justifies a defense budget of over $300 billion per year. When we debate national missile defense over the months ahead, we should not hesitate to reflect on the connection between what we do here today, and what those of us who support missile defenses hope to do tomorrow.

Mr. BINGAMAN. Mr. President, I rise today in strong support of S. 149, the Export Administration Act of 2001. From my perspective, consideration of this legislation is long overdue. Congress has extended the Export Administration Act on a temporary basis since 1984, and in doing so has completely ignored the extraordinary changes in technology that have occurred in that timeframe. Current export control policy, formulated during the Cold War several decades ago, no longer fits either the current global context or our specific national security needs. It is time to bring U.S. law into conformity with international reality.

Over the past year I have been involved in two high-level advisory panels that have carefully examined the existing U.S. export control regime. The first was a study group focusing on Enhancing Multilateral Export Controls for U.S. National Security, and was sponsored by the Henry L. Stimson Center and the Center for Strategic for International Studies. The second consisted of two study groups, one on Technology and Security in the 21st Century and one Computer Exports and National Security, sponsored entirely by the Center for Strategic for International Studies. Each of these groups concluded that existing export control policy and procedures are outdated, unsound, ineffective, unrealistic, and counterproductive. Taken as a whole, they impede coordination between the U.S. government agencies responsible for export control policy, they hinder our efforts to cooperate with our most important allies, they ignore the new threats and opportunities in the international system, they expend significant human and financial resources insulating easily available technologies, they limit the ability of our best companies to innovate and compete and, in the final analysis, they harm our military and commercial national security interests.

The studies I have mentioned offered a range of extremely important policy recommendations, but fundamental to them are three important overarching conclusions, all of which are relevant to the debate at hand.

The first conclusion is that globalization has resulted in what the Defense Science Board has previously called a ''leveling'' of access to technology and the capacity of the United States to obtain and control technologies critical to its national interest. This concept suggests that access to commercial technology is now universal, and its use for both commercial and military ends is largely unconstrained. Enabling technologies necessary for modern warfare, examples

being semiconductors, computer hardware and software, simulation and surveillance devices, advanced telecommunications, and so on, are available to nearly any country that wishes to access them, ally and adversary alike. The result of these changes is an export control regime that is, to quote the Defense Science Board, ''for all practical purposes ineffective at manipulating global access to dual-use technology and . . . only marginally more successful in the conventional weapons arena.'' This is the context within which we debate export control reform today, and these are the changes that the proposed legislation is trying to address.

The second overarching conclusion is that is that we need to put higher fences around much smaller, but more critical, sets of technologies. Because access to advanced technology and technical capabilities have spread so widely and because research and development is now global in nature, it is time that we focus our efforts at export control on limited technologies that directly affect our national security. In particular, we should concentrate on protecting and developing the software and databases that sustain and strengthen our military superiority. The primary objective in the current export control regime is to prevent potential adversaries from obtaining technological components that would allow them to develop weapons systems and manage warfare in a more effective fashion. Unfortunately, this objective is still considered rational, this in spite of the radical changes that have occurred in the international political economic environment. Commercial computers that can be obtained online or through retail outlets can now perform the vast majority of battlefield applications. As a result, a coherent and compelling argument can be made that we need to concentrate on controlling the technologies that will allow advanced components to be integrated into effective systems. This should be one of our primary considerations as we reconsider export control, and this is one of the goals the proposed legislation is trying to achieve.

The final overarching conclusion is that it is time that we begin creating a new international framework that will allow more effective export control between the United States and its allies. Changes in advanced technology and the global environment has undercut or weakened existing agreements, and we must begin creating a foundation upon which new cooperative mechanisms can be established. In the recent past, much of this required change has been blocked by the United States, the primary reason being that its export control system was based on measures, computer MTOPS being the most salient example, that are no longer relevant in the current international environment and are not adhered to by our allies. Regulatory reform in the United States must occur before new international frameworks can be established, and this is one of the goals the proposed legislation is trying to address.

There are those among my colleagues who would argue that even if the international system has changed to this extent, even if globalization has changed the international equation, the United States has a moral obligation to limit access to certain key technologies for a specific group of countries. The example used most frequently on the Senate floor is China, but certainly other countries could be inserted in its place.

Let me state here that I would not disagree that certain countries should be singled out as potential threats to the United States and technology limited to the extent that it is feasible to do so. But the proposed legislation accomplishes this objective. The arguments on the Senate floor that the proposed legislation somehow diminishes our capacity to control sensitive and critical technologies is specious at best. On the contrary, many levels of restrictions remain in place to protect U.S. national security interests. What the proposed legislation does do is provide the U.S. government with the flexibility and focus to address concerns over advanced technology and adapt to changes in the current international environment.

It is time that we change our anachronistic system of export control. This legislation reflects several years of hard work on the part of my colleagues, and I believe it represents a balanced and strategic approach to the problems at hand. The legislation was voted out of the Banking Committee by a 19–1 vote. As the statements on the floor will attest, the legislation has the bi-partisan support of most of the Members of the Senate. President Bush supports it, as does all the relevant officials in his Administration. President Clinton supported it, as did all the relevant officials in his Administration. It is supported by a broad range of organizations, many of which are led by key officials from previous Democratic and Republican Administrations.

However, with that said, I find it disappointing that the legislation has not addressed the important issue of U.S. commercial satellites and space-related component exports. The Defense Authorization Act for FY 1999 moved responsibility for export licensing of these items from the Department of Commerce to the Department of State. By doing so, communications satellite and space-related items were placed on the U.S. Munitions List, effecting a crippling blow to the U.S. aerospace industry. It makes timely deliveries to overseas customers and our allies nearly impossible, and excludes commercial satellite sales from competitive rate financing offered by the Export-Import Bank. While our U.S. companies may find themselves hard-pressed to find institutions to provide reasonable financing for foreign customers, their competitors may not. Last year, the Aerospace Industries Association claimed satellite exports had fallen over 40 percent in the period from late 1999 to early 2000, and the forecast was for the trend to get continually worse. I certainly hope this issue is addressed in the upcoming conference.

We have examined the issue of export control many times over. It is time to recognize the importance of export control reform to the national interest of the United States and pass this legislation.

Mr. LEAHY. Mr. President, I want to express my support for S. 149, the Export Administration Act of 2001. I want to commend Senators SARBANES, GRAMM, JOHNSON, and ENZI for crafting a balanced, bipartisan bill that brings long-overdue clarity to the regulation of dual-use exports. This bill removes several unnecessary restrictions on exports that only hinder international trade, puts in place a system to track and license those technologies that have the potential to impact national security, and establishes realistic penalties and sanctions for violations of these regulations.

I am pleased that the managers of the bill have accepted the amendment that Senator BIDEN and I proposed that will place controls on the export of items that are used to perpetrate acts of torture. The ''torture trade'' is a critical problem that has received too little attention from policymakers, the public, and the press. Too often, companies have exported items, apparently designed for security or crime control purposes, that are actually used to torture people by some of the most inhumane methods imaginable. Amnesty International reports that, over the past decade, more than 80 U.S. companies have been involved in the manufacture, marketing, and export of these types of items, like thumbscrews and electro-shock stun belts, which have been used to commit human rights abuses around the world.

The Leahy-Biden amendment is a modest step to improve the transparency, oversight, and accountability associated with the trade in these items. It builds on existing regulations and requires a license, subject to the approval of the Secretary of Commerce and the concurrence of the Secretary of State, before such items can be exported. It also contains an annual reporting requirement to disclose the aggregate number of licenses to export these items that were granted during the previous year.

This amendment is designed to make sure that certain goods and technologies are not used to commit acts of

torture and other human rights abuses. While our amendment moves us in the right direction, I recognize that more can and should be done. Representatives HYDE and LANTOS have included an amendment in their version of the bill which contains additional protections that could be very helpful in curtailing the torture trade. I strongly urge the conferees to take a serious look at the Hyde-Lantos amendment when determining the final outcome of the Export Administration Act.

Finally, I believe that the Administration should work with other nations to develop strict standards of export controls for these items. I understand that the European Union is in the process of doing this, and our government should encourage and support that effort.

Mr. FEINGOLD. Mr. President, I will oppose the pending legislation to reauthorize the Export Administration Act. I agree with the bill's proponents and with the Administration that we should have a statutory export control process. I am concerned, however, that the process provided for in this legislation is far too relaxed and could be harmful to our national security—the very security that the EAA is supposed to protect.

I commend the Senator from Tennessee, Mr. THOMPSON, and the Senator from Arizona, Mr. KYL, for their leadership on this important issue.

It is troubling that the debate on this important piece of national security legislation has revolved around what is good for American business rather than on what is necessary to protect the national security interests of this country.

As a number of our colleagues have said during this debate, the purpose of the EAA is not to promote U.S. exports. The purpose of the EAA is to protect the national security of the United States, which may mean barring certain types of sensitive technology from being exported. I fear that this bill tips the scale dangerously in favor of expanded commerce at the expense of our national security.

I disagree with the argument put forth by some during this debate that the foreign availability and mass market provisions included in this bill are key to ensuring that American companies can compete in the foreign market. Just because other countries choose to make a dual-use product available to international buyers does not mean the United States should as well. We should do everything we can to stem the flow of potentially dangerous dual-use technology around the world. We should not use the questionable export decisions of other countries to justify selling products that could be used to harm our country.

There is nothing wrong with having a deliberative process for considering applications to export dual-use technologies. I disagree with the contention that so many in the affected industries have advanced—that the licensing process puts them at a disadvantage because they have to wait for the licensing process to be completed before they can export the technology. This is not a race. And the object of the EAA is not to unduly delay the approval of export licenses. We should consider carefully each license application. I fear that this bill, and in particular its provisions regarding mass market and foreign availability determinations and the export of high performance computers, will have the practical effect of rendering our export control process meaningless.

Supporters of this bill argue that American businesses need the relaxed controls included in this bill in order to compete in the international marketplace. That is not the case. The vast majority of export license applications submitted to the Department of Commerce are approved. The purpose is to ensure that sensitive technology does not fall into the wrong hands.

Other countries look to the United States for guidance on such issues as export controls and non-proliferation efforts. If we relax controls on dual-use items because other countries are selling them, we are following, not leading. Just last week, the United States imposed sanctions on a Chinese company that transferred missile technology to Pakistan. The administration reportedly has told the Chinese Government that one of the conditions to having these sanctions lifted is for the Chinese to develop a system of export controls to regulate the transfer of sensitive technology. It is curious that the Senate is debating relaxing U.S. control of dual-use technology—a move the administration supports—at the same time the administration is calling on the Chinese Government to implement export controls.

I think we have to examine closely all sides of this issue, and again I want to thank Senator KYL and Senator THOMPSON for the outstanding work they have done to bring concerns about this legislation to the fore.

The fact is that there is a great deal of pressure from the super computer industry to pass this legislation. I don't say that to impugn the motives of any Member who supports this bill, because we are having an honest debate here about different points of view. But I do think it's important for the American people to understand who some of the strong supporters of this legislation are, so I would like to take a moment to Call the Bankroll on this issue.

The computer industry has a huge stake in the passage of EAA. They want a relaxation of the export controls on supercomputers, and they are lobbying hard for their cause. And, as is usually the case, lobbying means donating big money, and that means donating soft money to the party committees. In this case, the computer industry gave $20.5 million in soft money during the 2000 election cycle. The industry ranked seventh in overall donations in the last cycle, a meteoric rise for an industry that ranked 55th in donations a decade earlier. This is clearly an industry that has learned how to play the soft money game, and play it well.

I'll just name three soft money donors in the industry who are pushing for passage of EAA:

Unisys Corporation and its executives gave more than $142,000 in soft money in the 2000 election cycle;

Sun Microsystems gave more than $24,000 in soft money during the last cycle; and

United Technologies and its subsidiaries gave a whopping $338,300 in soft money in the 2000 election cycle.

As I said, this is in no way a comprehensive list, since the industry gave more than $20 million in soft money during the last cycle. But I point out these donations now because they are relevant to this debate—and relevant to the way many Americans view this debate, and so many others like it here on the Senate floor.

When wealthy interests are allowed to give an unlimited amount of money to a political party, it makes the American people question us and the work we do. And I can think of few issues where the public might be more disturbed by the potential influence of soft money than an issue like this one, where national and international security are at stake. Whether or not soft money clouds our own judgment, it clouds the public's judgement of each and every one of us.

I want to reiterate my opposition to this legislation. We can and should do more to protect the national security interests of the United States.

I will vote against this bill, and I urge my colleagues to do the same.

Mr. BIDEN. Mr. President, it has been 16 years since the United States Congress last enacted re-authorizing legislation governing our controls on the export of dual-use technology, those items suited for both civilian and military uses. For much of the past 7 years, the President has been forced to exercise emergency powers to maintain dual-use export controls following the expiration of the 1979 Export Administration Act. This temporary exercise of authority has limited the penalties the Federal Government can enforce on export control violators and has opened up existing export controls to a series of legal challenges.

It is high time, therefore, that the Senate act on S. 149, a bill to re-authorize the Export Administration Act. I look forward to the passage of this bill and the creation of a modern system of export controls.

We owe this to U.S. companies, which deserve a rational and predictable

framework of export controls. We owe this to our friends and allies, who look to the U.S. export control system as a model in devising their own systems. And, most importantly, we owe this to our national security, we cannot rely forever on an ad hoc system that metes out insufficient penalties and is based on shaky legal ground.

Export controls exist, first and foremost, for reasons of national security. The United States must not export items when the item or the end-user may contribute to the proliferation of weapons of mass destruction, strengthen the military capabilities of those who would oppose us, or otherwise endanger U.S. national security. A comprehensive export control system is just as important to preserving America's freedom and security as a strong military.

But export controls also exist to facilitate the free trade of goods and services, an essential building block of our international economy. The future growth of our economy and a leading global role for U.S. industry require a vital export market.

I think all of us can agree that national security considerations must always come first in devising export controls. We can all agree that such controls should not be so arbitrary as to stifle legitimate trade. We may differ, however, on where we draw the line in balancing these two opposing considerations.

Export controls can also serve another purpose. They can help reaffirm America's global leadership on human rights. Let me take this opportunity to commend Senators SARBANES and ENZI for accepting an amendment proposed by Senator LEAHY and me in this regard. The managers' amendment to S. 149 will tighten the controls on the export of items expressly designed for torture or especially susceptible to use in torture.

We are talking about items such as stun guns and shock batons, leg cuffs and restraint chairs. Yes, some of these items can have legitimate law enforcement uses and are in fact employed in a manner that does not abuse human rights. That is why this amendment would continue to allow their export, but make them subject to the licensing process and require the specific concurrence of the State Department as well as the approval of the Commerce Department.

The items covered by this amendment are devices that governments around the world too often use in suppressing political dissidents and ethnic opposition. This amendment requires the U.S. government to license each and every export of such items. It will help ensure that the United States does not indirectly contribute to the torture of individuals by engaging in the unlicensed trade of items used for torture. It is my hope that the Commerce and State Departments, working together, will see to it that licensed exports of these items are permitted only to those countries whose governments carry unblemished human rights records.

I once again thank Senators SARBANES and ENZI for accepting this amendment, and especially Senator LEAHY, who is once again a champion of human rights and with whom I am always delighted to work.

During this debate, a group of Senators, led by my good friends Senator THOMPSON and Senator KYL, has led an intense effort against S. 149. They argue that this bill fundamentally favors commercial equities over our national security interests. They are skeptical that the Commerce Department, which is responsible for cultivating U.S. business interests around the world, can play an impartial role in weighing national security considerations.

Truth be told, I have shared some of their concerns. That's why I am pleased that the floor managers have reached a compromise with Senators THOMPSON and KYL. This compromise includes amendments to S. 149 to: 1. enhance the discretionary authority of the Commerce Department to deny export licenses to another country when it is blocking legitimate post-shipment verifications of sensitive exports and 2. tighten the definition of foreign availability determinations which can exempt items from export controls. These changes to S. 149 approved today offer real improvements to this bill.

I plan to vote for S. 149. On the whole, this bill takes the right steps to bring our export controls for dual-use technologies into the 21st century. Is it a perfect bill? No. The House International Relations Committee, in marking up this bill last month, approved dozens of amendments, on a bipartisan basis. I would hope, therefore, to see further improvement of this bill in conference.

But now is not the time for delay on S. 149. The Senate has a duty to pass this legislation and to restore stability and predictability to our export control system for sensitive dual-use technologies.

Mr. WARNER. Mr. President, I rise today to address an issue that is critical to the national security of our Nation: the adequate control of the export of sensitive technologies. I have been active in this debate for the past 2 years, together with Senators HELMS, SHELBY, MCCAIN, THOMPSON, and KYL. We have worked with our colleagues on the Banking Committee, particularly Senators GRAMM, SARBANES, and ENZI, to craft a bill that protects our Nation's security, while at the same time allowing for appropriate commercial activity.

In April, I reluctantly objected to the motion to proceed to S.149, the Export Administration Act. At that time, I thought it was premature for the Senate to consider this bill until we had received detailed information from the Administration on this issue. I believe the Senate is now in a position to act on this important legislation.

I have tried for the past 2 years to work in a conscientious way with all parties to resolve the differences over this legislation. These differences have cut to the very essence of how the United States plans to protect its national security in an era of rapid globalization and proliferation of technology.

My goal in this debate has been to strike the proper balance between national security and commercial interests. As we all know, the high tech industry in the United States is currently second to none. We must ensure our domestic industry remains competitive without limiting access to new markets. Considering the rate at which technology becomes obsolete, being the first to deliver a product to a market is crucial. And while we cannot completely abandon national security concerns in favor of industry, we must not unnecessarily hinder the ability of our high tech companies to compete on the world stage. That is what I believe we have accomplished with this bill.

This is a complicated issue that cuts across the jurisdiction of six Senate Committees. Five Committee Chairmen with responsibility for national security matters in the U.S. Senate have continuously worked to improve this bill—myself as chairman of the Armed Services Committee, Senator SHELBY of the Intelligence Committee, Senator THOMPSON of the Governmental Affairs Committee, Senator HELMS of the Foreign Relations Committee, and Senator MCCAIN of the Commerce Committee. In addition, Senator KYL has been a leading participant in our discussions with the Banking Committee, the committee of primary jurisdiction.

The higher penalties and increased enforcement authority, the authority to require enhanced controls on items that need to be controlled for national security reasons, the requirement for the Department of Commerce to notify the Department of Defense of all commodity classifications are examples of progress made on the national security front.

I have great respect for the tireless efforts and dedication of my distinguished Banking committee colleagues, Senator GRAMM and Senator ENZI, in creating the EAA of 2001. I thank them for meeting with me and others several times throughout the past two years to listen to our concerns with balancing national security matters with economic interests. I hope these concerns will remain a priority for all of us.

In this year's version of the EAA, the Banking Committee has included additional national security protections at

the urging of the administration. As the debate on these issues has shown, there were concerns about the last administration's record in protecting some of our vital technology. A new administration is able to look at old problems with a fresh approach. It is in that context that the administration reviewed this bill at the request of myself, Senators MCCAIN, SHELBY, THOMPSON, HELMS and KYL. The National Security Advisor and three cabinet Secretaries were intimately involved in this review. As a result, the administration proposed a series of legislative changes that the Banking Committee has included in the bill that is before us.

Once these changes were made and the administration was actively engaged on the issue, the question then became a technical matter of how the administration would implement the statute. When the Senators expressing concerns regarding this bill were briefed on the results of the administration's review, we were informed that an interagency agreement had been achieved on how the administration would enhance national security controls during the course of implementing the EAA. Under the administration's proposal, we were informed that some national security protection that we had sought in the past would be included in the executive order that implements S. 149. Thus began a dialogue with the administration to come up with a better understanding of how this bill would be implemented.

My past concerns with earlier versions of EAA were based on concerns expressed by the Department of Defense. Last year, DOD provided the Senate Armed Services Committee with specific legislative changes that were necessary in their judgement to fix last year's EAA bill. This included addressing issues related to a national security carve-out or enhanced controls, commodity classifications, the enhanced proliferation control initiative, and deemed exports.

The Bush administration shares the concerns of the previous administration but has chosen to pursue some needed changes administratively. In this regard, I ask unanimous consent that a copy of a letter I received from Secretary of Commerce Evans be made a part of the legislative record. This letter provides some insight into the administration's interpretation of the bill language and commits the administration to implementing, for example, a ''disciplined and transparent process for escalating and deciding disputes'' on commodity classifications.

I am satisfied with the response that the administration has given me that they can work within the confines of this statute to protect national security. I trust that this administration will be able to do so. The Congress will, however, need to provide diligent oversight to ensure that this administration will conform to the high national security standards that they have set for themselves. When the EAA comes up for renewal in three years time, we may have to be more stringent in putting explicit national security protections in statute rather than leaving it to the discretion of the administration.

I want to thank my colleagues on the Intelligence, Foreign Relations, Commerce and Governmental Affairs Committees. These Members have worked over the last two years to improve this bill and ensure that our national security interests are protected. I know the job isn't finished yet. It has just begun and I will stand with my colleagues to ensure that our export control process is designed and operated to ensure that weapons of mass destruction do not get into the wrong hands.

It is time for the Congress to act on this bill. There is a need to reauthorize the EAA. The national security protections such as the national security carve out, increased penalties for export control violations, and greater visibility for the DOD over commodity classifications are positive steps. We need to lock in these improvements and work to ensure that nonproliferation concerns are protected and strengthened and that vital technology is protected. And we need to allow our domestic industry to compete in the world market without unnecessary and outmoded restrictions.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECRETARY OF COMMERCE,
Washington, DC, July 31, 2001.

Hon. JOHN WARNER,
U.S. Senate,
Washington, DC.

DEAR SENATOR WARNER: In light of our mutual interest in the Export Administration Act of 2001 (S. 149), I would like to address several issues related to S. 149 that I understand were raised by your staff in a recent discussion with Administration officials.

As you know, the Administration carefully reviewed S. 149. As a result of that review, the Administration recommended a number of amendments to the Senate Committee on Banking, Housing and Urban Affairs which were incorporated into the bill. Accordingly, the Administration strongly supports S. 149. We believe that the bill provides the proper framework for regulating the export of sensitive items consistent with our national security, foreign policy, and economic interests. For your convenience, I have enclosed an analysis that addresses in detail the issues raised by your staff.

I also understand that your staff asked about the Department's response to a recent report by the General Accounting Office (GAO) regarding controls on exports to Canada of items that could contribute to missile proliferation. The Department will shortly issue a proposed rule amending the licensing requirements applicable to exports to Canada. This new rule will address the issue raised by the GAO.

I appreciate your continued interest in the Export Administration Act of 2001. I look forward to working on the passage of this bill to ensure that the protection of national security is given the highest priority in the dual-use export control system process.

If you have any further questions, please call me or Brenda Becker, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482–3663.

Warm regards,

DONALD L. EVANS.

Enclosure.

ADMINISTRATION VIEW ON NATIONAL SECURITY ASPECTS OF S. 149

The Administration supports S. 149 because it sustains the President's broad authority to protect national security. S. 149 actually provides greater authority for the President to control dual-use exports than current law, the Export Administration Act of 1979 (EAA). S. 149 significantly raises the penalties for export control violations and contains other provisions that enhance the U.S. government's ability to enforce the law effectively. Higher penalties and increased enforcement authority will deter those who might otherwise endanger U.S. national security through illicit exports.

FOREIGN AVAILABILITY/MASS MARKET AND PARTS AND COMPONENTS

The bill does give exporters the right to ask the government to determine whether items are foreign or mass market available. However, the bill also gives the President several ways to continue controls on such items, if necessary, for national security reasons. In addition, S. 149 provides more authority than the existing law to require enhanced controls on such parts and components as needed to protect national security.

ROLE OF DEPARTMENT OF DEFENSE AND OTHER DEPARTMENTS

The bill provides a significant role for the Department of Defense in the licensing process, including:

—giving the Secretary of Defense concurrence authority in identifying items to be controlled for national security reasons. This is a greater role than Defense has under existing law because the scope of the national security control list under the bill is significantly greater than under current law.

—requiring the Secretary of Commerce to refer all license applications to the Secretaries of Defense and State for their review and recommendations. The bill also authorizes all reviewing departments, for the first time in statute, to escalate a proposed licensing decision to the President.

—requiring the Department of Commerce, for the first time in statute, to notify the Department of Defense of all commodity classification requests.

—requiring the Department of Commerce, for the first time in statute, to fully consider any intelligence information relevant to a proposed export when considering a license application.

—enabling the President to continue the longstanding procedure whereby the Office of Management and Budget ensures the concurrence of the Departments of State and Defense, and other agencies as appropriate, on regulations issued by Commerce pursuant to the act. This procedure allows the Departments of State and Defense to concur on regulations affecting their interests without requiring concurrence on regulations those departments may not wish to review.

—continuing the President's authority to require a license for transfers of controlled items to foreign nationals within the United States and requiring State and Defense's concurrence on such licenses.

Regarding restrictions on the President's delegation of authority, such restrictions are

limited and apply only to those areas not appropriately delegated to any one agency. Restricting decisionmaking authority to the President, in these very limited circumstances, ensures that all interests—including national security—will be fully considered.

As officials from the Departments of State and Defense testified at the House International Relations Committee on July 11, the provisions of S. 149 protect the President's authority to safeguard U.S. national security.

PROPOSED EXECUTIVE ORDER

Interagency review of export license applications is conducted under Executive Order 12981, as amended. Under this executive order, the Departments of Defense, State and Energy have the right to review all license applications submitted to the Department of Commerce. The only applications that these departments do not review are those they choose not to, such as applications to export crude oil.

S. 149 partially codifies Executive Order 12981 and provides the Administration the flexibility to structure an appeals process that will preserve the existing authorities of both the Departments of Defense and State. For example, the current executive order establishes an assistant secretary-level interagency working group to hear appeals of decisions made at lower levels. This group already is an integral part of the licensing process and the Administration plans to keep it so. Any new executive order promulgated after the passage of a new EAA would not alter Defense's current ability to review and object to license applications.

S. 149 also requires Commerce, for the first time in statute, to notify Defense of all commodity classification requests Commerce receives. The Administration has committed to implement by executive order a process by which all these commodity classification requests will be reviewed by Defense, with a disciplined and transparent process for escalating and deciding disputes. The Administration will brief Congress about all of the processes provided for in S. 149 as they are implemented.

Mr. SHELBY. Mr. President, I rise today in order to reiterate my concerns over the Export Administration Act of 2001.

There is little doubt that this bill will pass. The writing is on the wall. However, with all due respect to the administration and to my colleagues on the Banking Committee, I have and will continue to oppose S. 149.

Neither I nor Senators THOMPSON, KYL, HELMS or MCCAIN desire to impede American business entities in their pursuit of new markets. I for one tend to agree with President Calvin Coolidge, who said that, ''The chief business of the American people is business.'' Every Senator here today is an advocate for enhanced trade and for helping U.S. industry to export its goods and services. Exports bring prosperity to this Nation's companies and work to its citizens. If my advocacy for the U.S. technology industry were the sole basis upon which my decision on this legislation was to be based, I could easily change my past position and support passage of the Export Administration Act, or EAA as it is known. However, the other basis upon which the EAA should be measured is its effect upon the national security of the United States.

Earlier this summer, I was inspired when I listened as one of my colleagues, who had not previously supported my position on the EAA, publicly and emphatically stated, and I paraphrase, that when it comes to the difficult question of promoting trade or preserving national security, we must err on the side of national security.

That balance is the crux of this week's debate. We should not support a measure that could, as written, result in harm to Americans by technology developed and sold by Americans.

The pending bill addresses the control of ''dual use'' technology, that is, technology that has both commercial and military applications. Most commonly, our current export controls entail a licensing process for the export of most dual use technologies. Rather than prohibit exports outright, we generally ensure that we can determine which countries are receiving technology and keep track of anomalies in exporting so that we can measure whether technology is being put to military use. The EAA also regulates which countries will be permitted to import U.S. dual-use technologies. Generally, U.S. companies are not permitted to export dual use products to countries like Iran and Iraq.

This bill is an attempt to rewrite our export control laws to make them more rational. I too believe that this nation needs new export laws to meet today's trade realities. However, this effort must not open the floodgates for our dual use technology to be exported, without the ability for the U.S. Government to follow where that technology goes and its ultimate application.

For an export control regime to function properly, it must provide for a balancing of the commercial benefits involved—which are generally obvious, easily-quantified, concentrated, and immediate—with the national security concerns, which are typically shrouded in secrecy, difficult to quantify, diffuse, and long-term in nature. In this equation, national security can easily get the short end of the stick.

Not everything is shrouded in secrecy. In accordance with Section 721 of the 1997 Intelligence Authorization Act, twice a year the Director of Central Intelligence submits a report on trends in the proliferation of weapons technologies. Part of the report is unclassified. The report identifies key suppliers of dual use missile, nuclear, and conventional arms technologies, as well as dual-use biotechnology and chemical technology. Nations such as China and Russia are identified as key suppliers. They export their technology to the likes of Iraq, Iran, Libya, Syria, Sudan, Pakistan and India. The report received last winter detailed a continuing and significant problem.

Regarding Iran, the report states, and I quote:

Tehran expanded its efforts to seek considerable dual use biotechnical materials, equipment, and expertise from abroad—primarily from entities in Russia and Western Europe—ostensibly for civilian uses. We judge that this equipment and know-how could be applied to Iran's biological warfare program. Outside assistance is both important and difficult to prevent, given the dual-use nature of the materials, the equipment being sought, and the many legitimate end uses for these items.

Regarding Iraq, the report indicates that Saddam Hussein is utilizing all means to acquire dual-use technology. The report states:

Iraq has attempted to purchase numerous dual-use items for, or under the guise of, legitimate civilian use. This equipment, in principle subject to UN scrutiny, also could be diverted for weapons of mass destruction purposes. In addition, Iraq appears to be installing or repairing dual-use equipment at chemical weapons related facilities.

With respect to India, ''India continues to rely on foreign assistance for key missile and dual-use technologies where it still lacks engineering or production expertise in ballistic missile development.'' The report goes on to cite Russia and Western Europe as the primary conduits of India's missile related technology.

As stated in the Report, Pakistan received significant assistance from Communist China for its ballistic missile program in the early part of last year. As recently as this past weekend, the administration was forced to impose sanctions on the China Metallurgical Equipment Corporation for selling missile technology to Pakistan. The corporate entity in Pakistan which received the technology was also sanctioned. I know this has been and continues to be an issue of great concern to Senator THOMPSON. I commend him for his efforts to publicize Communist China's blatant disregard for its pledge not to support foreign nuclear missile programs.

The report did contain one note of optimism, which I believe is also directly applicable to today's debate. Nations such as Libya and Iran continued to attempt to acquire needed materials for weapons of mass destruction in Western Europe. They had some success in the first half of 2000, but the CIA report states that, ''Increasingly rigorous and effective export controls and cooperation among supplier countries have led the other foreign WMD programs to look elsewhere for many controlled dual-use goods.'' The point is, that while we cannot stop all proliferation, a rigorous export control regime can be effective in diffusing the spread of potentially threatening dual-use technology.

Mr. President, the problem is real. I believe it is a significant statement

when the Chairmen and now Ranking Members of the Senate Armed Services Committee, the Foreign Relations Committee, the Intelligence Committee, the Committee on Governmental Affairs and the Subcommittee on Technology, Terrorism and Government Information, have serious issues with the protections this legislation provides our national security. I am deeply disappointed that the new administration was not able to support reasonable amendments which would address the national security equities which we have highlighted. I am concerned that the interests of the high tech business community have replaced reasonable consideration of our dual use export control regime.

Technologies which are exported today can and will have to be dealt with by this Nation's national security apparatus. Consequently, I urge my colleagues to support the amendments of Senators THOMPSON, KYL, HELMS, and others, which will strengthen S. 149 with respect to national security. They are only a handful of the changes which should be made to this bill but they will serve to give the Defense Department and the State Department a more level playing field in the export control process from which to protect national security.

There is a proper balance between promoting business and preserving the national security. This bill does not strike that balance. As a conferee, I am hopeful that in conference, I can work with the members of the House, especially Chairman HYDE and continue these efforts to tilt the balance in favor of national security.

Mr. President, I ask unanimous consent to print in the RECORD entitled ''Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, 1 January through 30 June 2000.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNCLASSIFIED REPORT TO CONGRESS ON THE ACQUISITION OF TECHNOLOGY RELATING TO WEAPONS OF MASS DESTRUCTION AND ADVANCED CONVENTIONAL MUNITIONS, 1 JANUARY THROUGH 30 JUNE 2000

The Director of Central Intelligence (DCI) hereby submits this report in response to a Congressionally directed action in Section 721 of the FY 97 Intelligence Authorization Act, which requires:

''(a) Not later than 6 months after the date of the enactment of this Act, and every 6 months thereafter, the Director of Central Intelligence shall submit to Congress a report on

(1) the acquisition by foreign countries during the preceding 6 months of dual-use and other technology useful for the development or production of weapons of mass destruction (including nuclear weapons, chemical weapons, and biological weapons) and advanced conventional munitions; and

(2) trends in the acquisition of such technology by such countries.''

At the DCI's request, the DCI Nonproliferation Center (NPC) drafted this report and coordinated it throughout the Intelligence Community. As directed by Section 721, subsection (b) of the Act, it is unclassified. As such, the report does not present the details of the Intelligence Community's assessments of weapons of mass destruction and advanced conventional munitions programs that are available in other classified reports and briefings for the Congress.

ACQUISITION BY COUNTRY

As required by Section 721 of the FY 97 Intelligence Authorization Act, the following are summaries by country of acquisition activities (solicitations, negotiations, contracts, and deliveries) related to weapons of mass destruction (WMD) and advanced conventional weapons (ACW) that occurred from 1 January through 30 June 2000. We excluded countries that already have substantial WMD programs, such as China and Russia, as well as countries that demonstrated little WMD acquisition activity of concern.

Iran

Iran remains one of the most active countries seeking to acquire WMD and ACW technology from abroad. In doing so, Tehran is attempting to develop an indigenous capability to produce various types of weapons—chemical, biological, and nuclear—and their delivery systems. During the reporting period, the evidence indicates reflections of determined Iranian efforts to acquire WMD- and ACW-related equipment, materials, and technology focused primarily on entities in Russia, China, North Korea, and Western Europe.

Iran, a Chemical Weapons Convention (CWC) party, already has manufactured and stockpiled several thousand tons of chemical weapons, including blister, blood, and choking agents, and the bombs and artillery shells for delivering them. During the first half of 2000, Tehran continued to seek production technology, training, expertise, equipment, and chemicals that could be used as precursor agents in its chemical warfare (CW) program from entities in Russia and China.

Tehran expanded its efforts to seek considerable dual-use biotechnical materials, equipment, and expertise from abroad—primarily from entities in Russia and Western Europe—ostensibly for civilian uses. We judge that this equipment and know-how could be applied to Iran's biological warfare (BW) program. Iran probably began its offensive BW program during the Iran-Iraq war, and it may have some limited capability for BW deployment. Outside assistance is both important and difficult to prevent, given the dual-use nature of the materials, the equipment being sought, and the many legitimate end uses for these items.

Iran sought nuclear-related equipment, material, and technical expertise from a variety of sources, especially in Russia. Work continues on the construction of a 1,000-megawatt nuclear power reactor at Bushehr that will be subject to International Atomic Energy Agency (IAEA) safeguards. In addition, Russian entities continued to interact with Iranian research centers on various activities. These projects will help Iran augment its nuclear technology infrastructure, which in turn would be useful in supporting nuclear weapons research and development. The expertise and technology gained, along with the commercial channels and contacts established—even from cooperation that appears strictly civilian in nature—could be used to advance Iran's nuclear weapons research and development program.

Beginning in January 1998, the Russian Government took a number of steps to increase its oversight of entities involved in dealings with Iran and other states of proliferation concern. In 1999, it pushed a new export control law through the Duma. Russian firms, however, faced economic pressures to circumvent these controls and did so in some cases. The Russian Government, moreover, failed to enforce its export controls in some cases regarding Iran.

China pledged in October 1997 not to engage in any new nuclear cooperation with Iran but said it would complete cooperation on two nuclear projects: a small research reactor and a zirconium production facility at Esfahan that Iran will use to produce cladding for reactor fuel. As a party to the Nuclear Nonproliferation Treaty (NPT), Iran is required to apply IAEA safeguards to nuclear fuel, but safeguards are not required for the zirconium plant or its products.

Iran claims that it is attempting to establish fuel-cycle capabilities to support its civilian energy program. In that guise, it seeks to obtain turnkey facilities, such as a uranium conversion facility that, in fact, could be used in any number of ways to support fissile material production needed for a nuclear weapon. We suspect that Tehran most likely is interested in acquiring foreign fissile material and technology for weapons development as part of its overall nuclear weapons program.

During the first half of 2000, entities in Russia, North Korea, and China continued to supply the largest amount of ballistic missile—related goods, technology, and expertise to Iran. Tehran is using this assistance to support current production programs and to achieve its goal of becoming self-sufficient in the production of ballistic missiles. Iran already is producing Scud short-range ballistic missiles (SRBMs) and has built and publicly displayed prototypes for the Shahab–3 medium-range ballistic missile (MRBM). In addition, Iran's Defense Minister in 1999 publicly acknowledged the development of a Shahab–4, originally calling it a more capable ballistic missile than the Shahab–3 but later categorizing it as solely a space launch vehicle with no military applications. Iran's Defense Minister also has publicly mentioned a ''Shahab 5,'' although he said that development had not yet begun. Such statements, made against the backdrop of sustained cooperation with Russian, North Korean, and Chinese entities, strongly suggest that Tehran intends to develop a longer range ballistic missile capability.

Iran continues to acquire conventional weapons and production technologies from Russia and China. During the first half of 2000, Iran received five Mi–171 utility helicopters from Russia under a 1999 contract, and it began licensed production of Russian Konkurs (AT–5) antitank guided missiles. Iran also claims to be producing a new manportable surface-to-air missile knows as Misagh–1, which resembles China's QW–1 MANPAD system. Tehran also has been able to keep operational at least part of its existing fleet of Western-origin aircraft and helicopters supplied before the 1979 Iranian Revolution and continues to develop limited capabilities to produce armor, artillery, tactical missiles, munitions, and aircraft with foreign assistance.

Iraq

Since Operation Desert Fox in December 1998, Baghdad has refused to allow United Nations' inspectors into Iraq as required by Security Council Resolution 687. In spite of ongoing UN efforts to establish a follow-on

inspection regime comprising the UN Monitoring, Verification, and Inspection Commission (UNMOVIC) and the IAEA's Iraq Action Team, no UN inspections occurred during this reporting period. Moreover, the automated video monitoring system installed by the UN at known and suspect WMD facilities in Iraq is no longer operating. Having lost this on-the-ground access, it is more difficult for the UN or the US to accurately assess the current state of Iraq's WMD programs.

We do not have any direct evidence that Iraq has used the period since Desert Fox to reconstitute its WMD programs, although given its past behavior, this type of activity must be regarded as likely. We assess that since the suspension of UN inspections in December of 1998, Baghdad has had the capability to reinitiate both its CW and BW programs within a few weeks to months. Without an inspection monitoring program, however, it is more difficult to determine if Iraq has done so.

Since the Gulf war, Iraq has rebuilt key portions of its chemical production infrastructure for industrial and commercial use, as well as its missile production facilities. It has attempted to purchase numerous dual-use items for, or under the guise of, legitimate civilian use. This equipment—in principle subject to UN scrutiny—also could be diverted for WMD purposes. Since the suspension of UN inspections in December 1998, the risk of diversion has increased. Following Desert Fox, Baghdad again instituted a reconstruction effort on those facilities destroyed by the US bombing, including several critical missile production complexes and former dual-use CW production facilities. In addition, Iraq appears to be installing or repairing dual-use equipment at CW-related facilities. Some of these facilities could be converted fairly quickly for production of CW agents.

UNSCOM reported to the Security Council in December 1998 that Iraq also continued to withhold information related to its CW program. For example, Baghdad seized from UNSCOM inspectors an Air Force document discovered by UNSCOM that indicated that Iraq had not consumed as many CW munitions during the Iran-Iraq war in the 1980s as had been declared by Baghdad. This discrepancy indicates that Iraq may have hidden an additional 6,000 CW munitions.

In 1995, Iraq admitted to having an offensive BW program and submitted the first in a series of Full, Final, and Complete Disclosures (FFCDs) that were supposed to reveal the full scope of its BW program. According to UNSCOM, these disclosures are incomplete and filled with inaccuracies. Since the full scope and nature of Iraq's BW program was not verified, UNSCOM assessed that Iraq continues to maintain a knowledge base and industrial infrastructure that could be used to produce quickly a large amount of BW agents at any time, if needed.

Iraq has continued working on its L–29 unmanned aerial vehicle (UAV) program, which involves concerting L–29 jet trainer aircraft originally acquired from Eastern Europe. It is believed that Iraq may have been conducting flights of the L–29, possibly to test system improvements or to train new pilots. These refurbished trainer aircraft are believed to have been modified for delivery of chemical or, more likely, biological warfare agents.

We believe that Iraq has probably continued low-level theoretical R&D associated with its nuclear program. A sufficient source of fissile material remains Iraq's most significant obstacle to being able to produce a nuclear weapon.

Iraq continues to pursue development of SRBM systems that are not prohibited by the United Nations and may be expanding to longer range systems. Authorized pursuit of UN-permitted missiles continues to allow Baghdad to develop technological improvements and infrastructure that could be applied to a longer-range missile program. We believe that development of the liquid propellant Al-Samoud SRBM probably is maturing and that a low-level operational capability could be achieved in the near team. The solid-propellant missile development program may now be receiving a higher priority, and development of the Ababil-100 SRBM and possibly longer range systems may be moving ahead rapidly. If economic sanctions against Iraq were lifted, Baghdad probably would increase its attempts to acquire missile-related items from foreign sources, regardless of any future UN monitoring and continuing restrictions on long-range ballistic missile programs. Iraq probably retains a small, covert force of Scud-type missiles.

North Korea

P'yongyang continues to acquire raw materials from out-of-country entitles needed for its WMD and ballistic missile programs. During this time fame, North Korea continued procurement of raw materials and components for its ballistic missile programs from various foreign sources, especially through firms in China. We assess the North Korea is capable of producing and delivering via munitions a wide variety of chemical and biological agents.

During the first half of 2000, P'yongyang sought to procure technology worldwide that could have applications in its nuclear program, but we do not know of any procurement directly linked to the nuclear weapons program. We assess that North Korea has produced enough plutonium for at least one, and possibly two, nuclear weapons. The United States and North Korea are nearing completion on the joint project of canning spent fuel from the Yongbyon complex for long-term storage and ultimate shipment out of the North in accordance with the 1994 Agreed Framework. That reacher fuel contains enough plutonium for several more weapons.

North Korea continues to seek conventional arms. It signed a contract with Russia during this reporting period.

Libya

Libya has continued its efforts to obtain ballistic missile-related equipment, materials, technology, and expertise from foreign sources. Outside assistance is critical to its ballistic missile development programs, and the suspension of UN sanctions last year has allowed Tripoli to expand its procurement effort. Libya's current capability remains limited to its aging Scud B missiles, but with continued foreign assistance it may achieve an MRBM capability—a long-desired goal.

Libya remains heavily dependent on foreign suppliers for precursor chemicals and other key CW-related equipment. Following the suspension of UN sanctions in April 1999, Tripoli reestablished contacts with sources of expertise, parts, and precursor chemicals abroad, primarily with Western Europe. Libya still appears to have a goal of establishing an offensive CW capability and an indigenous production capability for weapons. Evidence suggests Libya also is seeking to acquire the capability to develop and produce BW agents.

Libya continues to develop its nascent nuclear research and development program but still requires significant foreign assistance to advance to a nuclear weapons option. The suspension of sanctions has accelerated the pace of procurement efforts in Libya's drive to rejuvenate its ostensibly civilian nuclear program. In early 2000, for example, Tripoli and Moscow renewed talks on cooperation at the Tajura Nuclear Research Center and discussed a potential power reactor deal. Should such civil-sector work come to fruition, Libya could gain opportunities to conduct weapons-related R&D.

Following the suspension of UN sanctions, Libya has negotiated deals—reported to be worth up to $100 million, according to Russian press—with Russian firms for conventional weapons, munitions, and upgrades and refurbishment for its existing inventory of Soviet-era weapons.

Syria

Syria sought CW-related precursors and expertise from foreign sources during the reporting period. Damascus already has a stockpile of the nerve agent sarin, and it would appear that Syria is trying to develop more toxic and persistent nerve agents. Syria remains dependent on foreign sources for key elements of its CW program, including precursor chemicals and key production equipment. It is highly probable that Syria also is developing an offensive BW capability.

We will continue to monitor the potential for Syria's embryonic nuclear research and development program to expand.

During the first half of 2000, Damascus continued work on establishing a solid-propellant rocket motor development and production capability with help from outside countries. Foreign equipment and assistance to its liquid-propellant missile program, primarily from North Korean entities, but also from firms in Russia, have been and will continue to be essential for Syria's effort. Damascus also continued its efforts to assemble—probably with considerable North Korean assistance—liquid fueled Scud C missiles.

Syria continues to acquire ACW—mainly from Russia and other FSU suppliers—although at a reduced level from the early 1990s. During the past few years, Syria has received Kornet-E (AT–14), Metis-M (AT–13), Konkurs (AT–5), and Bastion-M (AT–10B) antitank guided missiles, RPG–29 rocket launchers, and small arms, according to Russian press reports. Damascus has expressed interest in acquiring Russian Su–27 and MiG–29 fighters and air defense systems, but its outstanding debt to Moscow and inability to fund large purchases have hampered negotiations, according to press reports.

Sudan

During the reporting period, Sudan sought to acquire a variety of military equipment from various sources. Khartoum is seeking older, less expensive weapons that nonetheless are advanced compared with the capabilities of the weapons possessed by its opponents and their supporters in neighboring countries in the long-running civil war.

In the WMD arena, Sudan has been developing the capability to produce chemical weapons for many years. In this pursuit, it has obtained help from entities in other countries, principally Iraq. Given its history in developing chemical weapons and its close relationship with Iraq, Sudan may be interested in a BW program as well.

India

India continues its nuclear weapons development program, for which its underground nuclear tests in May 1998 were a significant

milestone. The acquisition of foreign equipment could benefit New Delhi in its efforts to develop and produce more sophisticated nuclear weapons. India obtained some foreign assistance for its civilian nuclear power program during the first half of 2000, primarily from Russia.

India continues to rely on foreign assistance for key missile and dual-use technologies, where it still lacks engineering or production expertise in ballistic missile development. Entities in Russia and Western Europe remained the primary conduits of missile-related technology transfers during the first half of 2000. New Delhi Flight-tested three short-range ballistic missiles between January and June 2000—the Prithvi–II in February and June, and the Dhanush in April.

India continues an across-the-board modernization of its armed forces through ACW, mostly from Russia, although many of its key programs have been plagued by delays. During the reporting period, New Delhi continued negotiations with Moscow for 310 T–90S main battle tanks Su–30 fighter aircraft production, A–50 Airborne Early Warning and Control (AWACS) aircraft, Tu–22M Backfire maritime strike bombers, and an aircraft carrier, according to press reports. India also continues to explore options for leasing or purchasing several AWACS systems from other entities. India has also received its first delivery of Russian Krasnopol laser-guided artillery rounds to be used in its Swedish-build FH–77 155-mm howitzers, negotiated the purchase of unmanned aerial vehicles form Israel, and considered offers for jet trainer aircraft from France and the United Kingdom.

Pakistan

Chinese entities continued to provide significant assistance to Pakistan's ballistic missile program during the first half of 2000. With Chinese assistance, Pakistan is rapidly moving toward serial production of solid-propellant SRBMs. Pakistan's development of the two-state Shaheen-II MRBM also requires continued Chinese assistance. The impact of North Korea's assistance throughout the reporting period is less clear.

Pakistan continued to acquire nuclear-related and dual-use equipment and materials from various sources—principally in Western Europe. Islamabad has a well-developed nuclear weapons program, as evidence by its first nuclear weapons tests in late May 1998. Acquisition of nuclear-related goods form foreign sources will remain important if Pakistan chooses to develop more advanced nuclear weapons. China, which has provided extensive support in the past to Islamabad's nuclear weapons and ballistic missile programs, in May 1996 pledged that it would not provide assistance to unsafeguarded nuclear facilities in any state, including Pakistan. We cannot rule out, however, some continued contacts between Chinese entities and entities involved in Pakistan's nuclear weapons development.

Pakistan continues to rely on China and France for its ACW requirements. Pakistan received eight upgraded Mirage III/V fighters from France and continued negotiations to purchase an additional 50 F–7 fighters from China.

Egypt

Egypt continues its effort to develop and produce ballistic missiles with the assistance of North Korea. This activity is part of a long-running program of ballistic missile cooperation between these two countries.

KEY SUPPLIERS

Russia

Despite overall improvements in Russia's economy, the state-run defense and nuclear industries remain strapped for funds, even as Moscow looks to them for badly needed foreign exchange through exports. We remain very concerned about the nonproliferation implications of such sales in several areas. Monitoring Russian proliferation behavior, therefore, will remain a very high priority.

Russian entities during the reporting period continued to supply a variety of ballistic missile-related goods and technical know-how to countries such as Iran, India, China, and Libya. Iran's earlier success in gaining technology and materials from Russian entities accelerated Iranian development of the Shahab–3 MRBM, which was first flight-tested in July 1998. Russian entities during the first six months of 2000 have provided substantial missile-related technology, training, and expertise to Iran that almost certainly will continue to accelerate Iranian efforts to develop new ballistic missile systems.

Russia also remained a key supplier for civilian nuclear programs in Iran, primarily focused on the Bushehr Nuclear Power Plant project. With respect to Iran's nuclear infrastructure, Russian assistance enhances Iran's ability to support a nuclear weapons development effort. By its very nature, even the transfer of civilian technology may be of use in Iran's nuclear weapons program. We remain concerned that Tehran is seeking more than a buildup of its civilian infrastructure, and the Intelligence Community will be closely monitoring the relationship with Moscow for any direct assistance in support of a military program.

In January, Russia's cabinet approved a draft cooperative program with Syria that included civil use of nuclear power. Broader access to Russian scientists could provide opportunities to solicit fissile material production expertise if Syria decided to pursue a nuclear weapons option. In addition, Russia supplied India with material for its civilian nuclear program during this reporting period. President Putin in May amended the presidential decree on nuclear exports to allow the export in exceptional cases of nuclear materials, technology, and equipment to countries that do not have full-scope IAEA safeguards, according to press reports. The move could clear the way for expanding nuclear exports to certain countries that do not have full-scope safeguards, such as India.

During the first half of 2000, Russian entities remained a significant source of dual-use biotechnology, chemicals, production technology, and equipment for Iran. Russia's biological and chemical expertise make it an attractive target for Iranians seeking technical information and training on BW- and CW-agent production processes.

Russia continues to be a major supplier of conventional arms. It is the primary source of ACW for China and India, it continues to supply ACW to Iran and Syria, and it has negotiated new contracts with Libya and North Korea, according to press reports.

The Russian Government's commitment, willingness, and ability to curb proliferation-related transfers remain uncertain. The export control bureaucracy was reorganized again as part of President Putin's broader government reorganization in May. The Federal Service for Currency and Export Controls (VEK) was abolished and its functions assumed by a new department in the Ministry of Economic Development and Trade. VEK had been tasked with drafting the implementing decrees for Russia's July 1999 export control law; the status of these decrees is not known. Export enforcement continues to need improvement. In February 2000, Sergey Ivanov, Secretary of Russia's Security Council, said that during 1998–99 the government had obtained convictions for unauthorized technology transfers in only three cases. The Russian press has reported on cases where advanced equipment is simply described as something else in the export documentation and is exported. Enterprises sometimes falsely declare goods just to avoid government taxes.

North Korea

Throughout the first half of 2000, North Korea continued to export significant ballistic missile—related equipment and missile components, materials, and technical expertise to countries in the Middle East, South Asia, and North Africa. P'yongyang attaches a high priority to the development and sale of ballistic missiles, equipment, and related technology. Exports of ballistic missiles and related technology are one of the North's major sources of hard currency, which fuel continued missile development and production.

China

During this reporting period, the Chinese have continued to take a very narrow interpretation of their bilateral nonproliferation commitments with the United States. In the case of missile-related transfers, Beijing has repeatedly pledged not to sell Missile Technology Control Regime (MTCR) Category I systems but has not recognized the regime's key technology annex. China is not a member of the MTCR.

Chinese missile-related technical assistance to Pakistan continued to be substantial during this reporting period. With Chinese assistance, Pakistan is rapidly moving toward serial production of solid-propellant SRBMs. Pakistan's development of the two-stage Shaheen–II MRBM also requires continued Chinese assistance. In addition, firms in China provided missile-related items, raw materials, and/or assistance to several other countries of proliferation concern—such as Iran, North Korea, and Libya.

Chinese entities have provided extensive support in the past to Pakistan's safeguarded and unsafeguarded nuclear programs. In May 1996, Beijing pledged that it would not provide assistance to unsafeguarded nuclear facilities. We cannot rule out some continued contacts between Chinese entities and entities associated with Pakistan's nuclear weapons program. China's involvement with Pakistan will continue to be monitored closely.

With regard to Iran, China confirmed that work associated with two remaining nuclear projects—a small research reactor and a zirconium production facility—would continue until the projects were completed. The intelligence Community will continue to monitor carefully Chinese nuclear cooperation with Iran.

Prior to the reporting period, Chinese firms had supplied CW-related production equipment and technology to Iran. The US sanctions imposed in May 1997 on seven Chinese entities for knowingly and materially contributing to Iran's CW program remain in effect. Evidence during the current reporting period shows Iran continues to seek such assistance from Chinese entities, but it is unclear to what extent these efforts have succeeded. In June 1998, China announced that it had expanded its CWC-based chemical export controls to include 10 of the 20 Australia

Group chemicals not listed on the CWC schedules.

Western Countries

As was the case in 1998 and 1999, entities in Western countries in 2000 were not as important as sources for WMD-related goods and materials as in past years. However, Iran and Libya continue to recruit entities in Western Europe to provide needed acquisitions for their WMD programs. Increasingly rigorous and effective export controls and cooperation among supplier countries have led the other foreign WMD programs to look elsewhere for many controlled dual-use goods. Machine tools, spare parts for dual-use equipment, and widely available materials, scientific equipment, and specialty metals were the most common items sought. In addition, several Western countries announced their willingness to negotiate ACW sales to Libya.

TRENDS

As in previous reports, countries determined to maintain WMD and missile programs over the long term have been placing significant emphasis on insulating their programs against interdiction and disruption, as well as trying to reduce their dependence on imports by developing indigenous production capabilities. Although these capabilities may not always be a good substitute for foreign imports—particularly for more advanced technologies—in many cases they may prove to be adequate. In addition, as their domestic capabilities grow, traditional recipients of WMD and missile technology could emerge as new suppliers of technology and expertise. Many of these countries—such as India, Iran and Pakistan—do not adhere to the export restraints embodied in such supplier groups as the Nuclear Suppliers Group and the Missile Technology Control Regime.

Some countries of proliferation concern are continuing efforts to develop indigenous designs for advanced conventional weapons and expand production capabilities, although most of these programs usually rely heavily on foreign technical assistance. Many of these countries—unable to obtain newer or more advanced arms—are pursuing upgrade programs for existing inventories.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now be in a period for morning business.

The Senator from Tennessee.

NATIONAL SECURITY

Mr. THOMPSON. Mr. President, before my colleague from Texas leaves the Chamber, I want to congratulate him on what I consider to be another major achievement of his career. He can add this legislation to the long list of legislation he has either been primarily responsible for or substantially responsible for. While we have disagreements on the legislation, this is something I have seen him work tirelessly on for at least a couple of years now, and certainly Senator ENZI carried a large share of the work, as Senator GRAMM said.

This is another one of those instances where Senator GRAMM took an issue like a dog taking to a bone and did not turn it loose until he got it done. I must say it is another impressive performance, and I want to congratulate my good friend for adding another important legislative victory to his long legacy.

I want to discuss the legislation for a minute in response to my good friend. We talked of two goals. This bill has been put to bed now, as it were. We are going to be voting on it shortly. We have made some modest improvement to it. The Senators opposite are correct in saying we have been talking about this a long time.

I do not know whether we can take credit for 59 changes or not. They say 59 changes have been made, but I guess we can take credit for some changes that have been made along the way to improve the bill.

We still have problems with the basic concept, and right before we go off into this good night, we need to lodge at least one summary statement with regard to the nature of our concern and where we hopefully will go from here.

The nature of our concern simply is this: It is a more dangerous world out there than ever before, and we have to be more careful than ever we do not export dangerous items to dangerous people that will turn around and hurt this country. The risk of that is greater than ever before.

We do not have two equal goals of trade and commerce on the one hand and national security on the other. The interest of national security dwarfs the interest of trade and commerce, although they are discussed in this Chamber somehow in equipoise. That is not the case. It should not be the case. It is not even set out that way in the bill if one looks to the purposes of the bill. The purposes of the bill are to protect this country. That is why we have an export law, not to facilitate business.

A great majority of the time I am with my business friends, but when it comes to national security I must depart with those who would weigh too heavily the interests of trade. I suggest those who are interested in trade get about giving the President fast track, giving the President trade promotion authority. That will do more for trade and industry and to help the economy of this Nation than exporting dual-use high tech items to China and Russia that may find their way to Iran and Iraq. So that is what we ought to be doing if we are concerned about trade in this country. So those two goals are not equal.

We need to understand what we are doing once again on these issues. Call it a balance, if you will. No matter how you weigh the factors involved, we are giving the Secretary of Commerce and those within the department responsibility for national security. The Secretary, who I have the greatest confidence in—and I think he is a great man doing a great job—should not have the responsibility for national security. That is not supposed to be his job.

We are once again giving the Commerce Department, which we greatly criticized during the Clinton administration for some of their laxness, the life or death decisionmaking power in terms of these regulations or policies, in many important instances—not all instances, not always unilaterally, but many of them in some very important areas. We are deregulating entire categories of exports.

Foreign availability has always been something we considered in terms of whether or not we would export something or grant a license for something, and I think properly so. We do not want to foolishly try to control things not controllable. So foreign availability ought to be a consideration. We are moving light-years away from that, letting someone over at the Department of Commerce categorize entire areas of foreign availability that takes it totally out of the licensing process, so you do not have a license, and our Government cannot keep up with what is being exported to China or Russia. That is a major move. It is not a good move.

With regard to the enhanced penalties, what sanction is there to be imposed upon an exporter when he is not even required to have a license? It is saying: We will raise the penalty for your conduct, but we will make your conduct legal. That is not very effective in terms of export control, to say the least.

Finally, when I hear the proponents of this legislation say 99.6 percent of these exports are approved anyway, they are arguing against themselves. They use it to make the point this is kind of a foolish process anyway. So if the great majority of them are going to be approved, why even have the process? I assume that is the logical conclusion of their position.

My question is: What about the .4 percent that don't make it? Do we not have to look at the body of exports taking place in order to determine what that .4 is? Or if we didn't have a process, would that .4 be more like 3.4 if people knew there wasn't such a process? The .4 is the important thing to look at. Besides, if all the exports are being approved anyway, why is it so onerous to go through a process that will take a few days and get a clean bill of health so there is no question?

Therein lies the basis of our concern. It is a fundamental disagreement as to how far we should be going in this dangerous time. As the world is becoming